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BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
FOR THE
SUPERINTENDENT OF PUBLIC INSTRUCTION

IN THE MATTER OF THE EDUCATION
OF STUDENT AND GRANTS PASS
SCHOOL DISTRICT

Case No.: DP 14-102

HEARING

HELD ON
TUESDAY, MAY 13, 2014
9:05 A.M.

1867 WILLIAMS HWY, SUITE 110
GRANTS PASS, OREGON 97527

APPEARANCES**Appearing on behalf of the Student:**

PARENT OF STUDENT

IN PRO SE

1370 SW David Drive

Grants Pass, Oregon 97527

Appearing on behalf of Silver Falls School District:

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APPEARANCES (Continued)**Presiding:**

A. BERNADETTE HOUSE,
SENIOR ADMINISTRATIVE LAW JUDGE
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Also Present:

DOUG ELY
EMILY LUKA
PAM SCHWERDT, PH.D.
KIRK KOLB

1 **HEARING**

2 **HELD ON**

3 **TUESDAY, MAY 13, 2014**

4 **9:05 A.M.**

5
6 **JUDGE HOUSE:** Good morning. This is
7 Administrative Law Judge Bernadette House with the
8 Office of Administrative Hearings for the State of
9 Oregon.

10 We are convening a due-process hearing in
11 the matter of Student and Grants Pass School
12 District, and this is on DP Case 14-102. Today's
13 date is May 13th, and the hearing is set to convene
14 at 9:00. It's 9:05.

15 Ms. Yates has the names of the parties who
16 are present in the room, but I will for the purposes
17 of the record go over the -- and I used that word
18 inappropriately -- the individuals who are in the
19 room.

20 The parties that are in the room, the
21 Parent is representing himself, and that is
22 [Parent]; is that correct?

23 **[PARENT]:** Correct.

24 **JUDGE HOUSE:** And [Parent] is present.

25 And then representing the District is

1 Richard Cohn-Lee, and Mr. Cohn-Lee has with him his
2 representative for the District, Kirk Kolb, Director
3 of Special Services.

4 And then I understand we have Joel
5 Hungerford assisting Mr. Cohn-Lee today; is that
6 correct?

7 **MR. COHN-LEE:** That's correct, Judge.

8 **JUDGE HOUSE:** Is there anyone else that at
9 this point I need to be aware of? Okay.

10 The other individuals attending are here.
11 It's a public hearing at the request of the Parent.
12 So I just ask that you remain silent and don't use
13 cell phones.

14 And if there is a motion to exclude
15 witnesses, anyone that would be called later would
16 need to leave. I don't have that motion at this
17 time.

18 This motion was set pursuant to a Notice
19 of Hearing mailed to the parties, and I want to make
20 sure everyone got that. I believe that they did,
21 but a service date should have been the 5th of May,
22 2014.

23 In this matter, the prehearing conference
24 was held on -- I'm going to go back and look at the
25 -- okay. Got so many documents in this case.

1 Prehearing in this matter was held on April 21st,
2 2014. And Mr. Cohn-Lee and the Parent participated
3 in that hearing.

4 At that time there were deadlines set, and
5 there were motions that were filed, and the rulings
6 in the case file -- there was a ruling on a motion
7 to compel, discovery, a motion to consolidate, and a
8 motion for summary determination. I'll set that out
9 in the case hearing.

10 The motion for summary determination was
11 denied. The motion to compel was granted in part,
12 denied in part. The motion to consolidate was
13 denied.

14 This hearing, the issues in this hearing
15 were set out, and they are based on the Due Process
16 Hearing Request filed March 19th, 2014:

17 Whether during the IEP meetings to address
18 the Student's IEP development -- including November
19 20th, 2013, and March 18th, 2014 -- District failed
20 to consider and provide for extended school-year
21 services to the Student in compliance with the
22 federal laws set out in the notice and the Oregon
23 Administrative Rules that implement that federal
24 law; if so, whether that failure to consider ESY at
25 that time resulted in a substantive violation of

1 Student's rights under the IDEA, whether the
2 District prohibited discussion of ESY -- and that is
3 extended-year services -- at the November 20th,
4 2013, and March 18th, 2014, IEP meetings; and if so,
5 whether the District violated Parent's rights to
6 participate in the development, revision, and review
7 of Student's IEP under the federal rules and the
8 Oregon rules; and, if those alleged violations
9 occurred, if they resulted in a substantive
10 violation of the student's right under IDEA; and if
11 so, what is the appropriate remedy.

12 The Parent under case Schaffer vs. Weast
13 bears burden of proof, having brought the complaint,
14 and must show more likely than not that the facts
15 alleged occurred, that those facts are a violation
16 of a law or rule, and that law or rule --

17 **MR. COHN-LEE:** Do we want to -- given the
18 temperature -- I don't think a lot of people transit
19 this hall, Judge. I'm sorry for interrupting, but I
20 know it is going to get hot in here if we close that
21 door.

22 **JUDGE HOUSE:** And for purposes of the
23 record, what just happened is there are voices
24 outside. This room is small, and we may have some
25 interrupting noise. Let me ask Ms. Yates.

1 On extraneous noise, is there a way you
2 can handle that in the written record?

3 **THE REPORTER:** No, there isn't. And we
4 can play it by ear, and if it gets to be too much,
5 we can close the door. But it's okay with me.

6 **JUDGE HOUSE:** Just let me know.

7 **THE REPORTER:** Okay.

8 **JUDGE HOUSE:** Okay?

9 And reason I'm speaking -- I sound rather
10 deliberative -- is I am actually speak at a very
11 fast speed. But what I've done is slowed down so
12 that the court reporter can hear me.

13 **THE REPORTER:** Thank you.

14 **JUDGE HOUSE:** And if I speed back up, she
15 has my permission to interrupt and say "Please,
16 excuse me, slow down." If she does that with you, I
17 would appreciate it if you would too.

18 The other thing that will happen with the
19 court reporter is we're used to using nonverbal
20 cues. We nod our heads to say "yes." "Yes" doesn't
21 show up on the record.

22 So we have to say "yes," "no," and if you
23 begin an explanation of something and you start to
24 use your hands to tell what it is, I'll ask you to
25 describe what you are doing so that it appears

1 clearly on the record.

2 Simply, we have to create a visual verbal
3 record. All right.

4 So the Parent, as I was saying, has the
5 burden of proof. And the Parent chose to go first
6 in this case to present his case, and we have two
7 days set for this matter.

8 There's -- and I am going to paraphrase of
9 course. If I paraphrase incorrectly, the law
10 applies.

11 Essentially under the general rules of the
12 IDEA, there are procedural issues, and there are
13 procedural requirements to complying with the law.

14 If there is a procedural violation shown
15 by the standard of proof which is more likely than
16 not -- that's a 51.9 percent balancing test whether
17 a matter that's testified to did or did not occur.

18 If a procedural violation is shown, it
19 also must have resulted in a substantive violation
20 at the time we're talking about. So you can't look
21 to the future. You can't speculate what would
22 happen.

23 It has to be shown essentially that at the
24 time the Parent brought the complaint on the alleged
25 violations, that those violations -- if they're

1 technical or procedural violations, that's a
2 substantive violation that shows that the District
3 did not provide a free and appropriate public
4 education, which is FAPE, under the Individuals With
5 Disabilities Act.

6 And since 2004, it's actually the
7 Individuals with Disabilities Improvement Act. I'm
8 the only one that gets hung up on that because I've
9 been in this a long time.

10 But it is at that time, and then whether
11 or not there is an appropriate remedy. So those
12 steps must be shown in order to prevail in this
13 case.

14 And the District has the -- if the witness
15 list -- and I do apologize. I'm going to ask the
16 parties to work with me very quickly on that. I
17 assume that the same witnesses or similar sets of
18 witnesses will be called.

19 And, [Parent], I'm going to ask you if you
20 can give me an estimate or tell me in order who
21 you're going to call and what you expect them to
22 testify to so we have an idea of where we're going
23 with this.

24 **[PARENT]:** Um --

25 **JUDGE HOUSE:** I have your witness list.

1 **THE REPORTER:** [Parent], would you speak
2 up a little bit, please.

3 **[PARENT]:** Certainly.

4 **JUDGE HOUSE:** Actually, [Parent], I have
5 your exhibit list. And if you can tell me where you
6 may have sent or placed that as your -- I apologize.

7 **[PARENT]:** It was a page right before the
8 exhibit list.

9 **JUDGE HOUSE:** All right.

10 **[PARENT]:** On the fax. I mean I don't
11 know how it all turned out in the end.

12 **JUDGE HOUSE:** All right. I have -- Mr.
13 Cohn-Lee, did you receive a witness list from
14 [Parent]?

15 **MR. COHN-LEE:** I did, Judge, yes. I have
16 a copy here as well if you want to take a look at
17 it.

18 **JUDGE HOUSE:** I've got it. Thank you.

19 **MR. COHN-LEE:** Uh-huh.

20 **JUDGE HOUSE:** You're going to be calling
21 Doug Ely, and Mr. Ely will be testifying -- and you
22 also have Dorothy Jewell.

23 Normally I would have read every single
24 document in this case before today. I could not do
25 that last night. I read a lot of it, but not all of

1 it. [Parent], how long do you expect to be
2 questioning Mr. Kolb? Do you have any idea?

3 **[PARENT]:** Minimum an hour.

4 **JUDGE HOUSE:** And is he your first
5 witness?

6 **[PARENT]:** No.

7 **JUDGE HOUSE:** Who is your first witness?

8 **[PARENT]:** What was the name you read?

9 **JUDGE HOUSE:** Doug Ely and Dorothy Jewell.

10 **[PARENT]:** Is that it?

11 **JUDGE HOUSE:** Yes.

12 **[PARENT]:** Okay.

13 **JUDGE HOUSE:** And I assume -- this is
14 something that a pro se will frequently do, forget
15 to put themselves on the list. But you also have
16 the right to testify.

17 **[PARENT]:** Understood.

18 **JUDGE HOUSE:** All right. So who are you
19 going to call first of those three?

20 **[PARENT]:** I'll call Mr. Kolb.

21 **JUDGE HOUSE:** Okay. And as I noted in my
22 prehearing order, because the District will also be
23 calling Mr. Kolb, you will not be restricted in your
24 case to cross-examination.

25 So I'll allow you to ask direct --

1 questions on direct that are open-ended. You can't
2 tell the person what their answer is as to who,
3 what, when, where, and why.

4 And then Mr. Cohn-Lee will follow up, and
5 his questions may also be general. They're not
6 limited only to what you ask the witness. Normally
7 they would be, they won't be in this case.

8 We're going to go through each witness
9 that is a dual witness that way. All right?

10 **[PARENT]:** All right.

11 **JUDGE HOUSE:** And I'm trying to make sure
12 that I don't forget some basics.

13 As an administrative law judge with the
14 Office of Administrative Hearings, I'm independent
15 of either party. I'll make findings of fact after
16 this hearing, and I will apply the law as I find it
17 and then write an order that is a final order in
18 this case.

19 And the orders in these cases may be
20 appealed to either the local Oregon circuit court or
21 to the federal district court.

22 So there's two avenues of appeal, but mine
23 is a final order in this case.

24 And I do have special training. As I
25 said, I've been holding these cases since 2003.

1 If you need anything during the hearing as
2 far as something that will make it easier for you
3 comfortwise or if there is something that I can help
4 explain the process for, please ask.

5 **[PARENT]:** Okay. Very good.

6 **JUDGE HOUSE:** But I can't help.

7 **[PARENT]:** Understood.

8 **JUDGE HOUSE:** And I can't give you legal
9 advice, and there's a very fine line. And I can't
10 give Mr. Cohn-Lee legal advice.

11 But to the extent that I can help
12 facilitate the development of a full and fair
13 inquiry, if there are some things that I need to
14 know, I will also ask questions.

15 So my job is to develop a full, fair
16 inquiry and create that record and write the
17 decision based on that.

18 Okay?

19 **[PARENT]:** Yes.

20 **JUDGE HOUSE:** And then because we have
21 limited time, if something begins to become
22 repetitive, I will call attention to that and say
23 "Is there anything new that we want to cover." And
24 then if there's not, we'll move on.

25 Okay?

1 [PARENT]: Yes.

2 JUDGE HOUSE: And then Mr. Cohn-Lee may
3 object to a question that you ask. I would ask the
4 witness at that time to please stop, and I'll make a
5 ruling and then will either direct the witness to go
6 ahead or not answer.

7 And then you may object in the same
8 fashion. And I think we talked about that at the
9 prehearing conference. It's based on immaterial,
10 irrelevant, or unduly repetitious, or it's just
11 plain not reliable.

12 Okay? Do you remember that standard?

13 [PARENT]: I have my objections.

14 JUDGE HOUSE: All right. Okay. All
15 right. Before we get started, I do have a prehearing
16 brief from Mr. Cohn-Lee.

17 Did you have anything that you wanted to
18 say orally to me about the case before we start?

19 [PARENT]: Um --

20 JUDGE HOUSE: And it's not necessary.

21 [PARENT]: No. I had a motion. Do we do
22 that before?

23 JUDGE HOUSE: A motion at this time?

24 [PARENT]: Right.

25 JUDGE HOUSE: All right. And the motion

1 was not filed before today because?

2 **[PARENT]:** Well, I'm just moving to
3 exclude the witnesses from the room.

4 **JUDGE HOUSE:** All right. The witnesses
5 from the room. Your motion is granted.

6 Mr. Kolb will not be excluded because he's
7 the representative.

8 **THE WITNESS:** Understood.

9 **JUDGE HOUSE:** All right. And then this
10 gentleman that is leaving is?

11 **MR. ELY:** Doug Ely.

12 **JUDGE HOUSE:** Mr. Ely. All right.

13 **MS. JEWELL:** Dorothy Jewell.

14 **JUDGE HOUSE:** All right. Thank you.

15 **MR. COHN-LEE:** And, Judge, could I just
16 ask quick, before Mr. Ely is excused --

17 **JUDGE HOUSE:** Yes --

18 **MR. COHN-LEE:** -- just more of a timing
19 and procedure issue? I was just wondering when
20 [Parent] anticipated calling Mr. Ely because I think
21 Mr. Ely does have a time limitation tomorrow. He
22 would need to leave by --

23 **MR. ELY:** By one o'clock.

24 **MR. COHN-LEE:** -- by one o'clock.

25 So, again, I don't know if [Parent] is

1 anticipating calling Mr. Ely as the following
2 witness or not. We're hoping we can accommodate his
3 schedule if possible.

4 **JUDGE HOUSE:** If we have a feeling that
5 we're going to go longer with Mr. Kolb too, we can
6 also excuse the witnesses, and if you have a cell
7 phone, we can call you back.

8 Can we go off the record for a second just
9 for scheduling purposes.

10 **(A discussion was held from 9:20 a.m. to**
11 **9:21 a.m.)**

12 **JUDGE HOUSE:** We were just scheduling off
13 the record, calling the witness. [Parent] had asked
14 for Mr. Doug Ely to testify. He has just indicated
15 that he is not going to call Mr. Ely, and the
16 District is not intending to call Mr. Ely.

17 So I'm going to excuse the witness. Once
18 I do that, he won't be subject to re-call.

19 **[PARENT]:** Understood.

20 **JUDGE HOUSE:** All right. Mr. Ely, thank
21 you very much for your time to appear this morning.

22 And then Ms. Jewell would be your second
23 witness, [Parent]?

24 **[PARENT]:** Correct.

25 **JUDGE HOUSE:** So, Ms. Jewell, if you can

1 wait, I would anticipate that it's possibly going to
2 be two hours before we need you. If there's a cell
3 phone and you could be close by, you don't have to
4 just sit outside.

5 **MS. JEWELL:** Should I leave my cell number
6 with you?

7 **MR. COHN-LEE:** I'm assuming Mr. Kolb has
8 that, but if you would leave that with us, that
9 would be great. And you can also provide it to Mr.
10 Hungerford, who can take care of the arrangements.

11 And, Ms. Erickson, because you'll be one
12 of our witnesses, you'll -- when we say a witness
13 will be recused or excused, it means that all the
14 witnesses have to step out.

15 So same rule applies to you. If you'd
16 like to go somewhere, I imagine it would probably --

17 **JUDGE HOUSE:** It would be all right. And
18 I'm going to ask I guess -- just a minute, Ms.
19 Erickson. We may be able to also do the same with
20 you. If we have a cell phone number, we can
21 anticipate that -- all right.

22 If you can be roughly within five to 10
23 minutes of the building, then that would be fine.
24 And if we get a better hold, we may be able to
25 release you until later.

1 All right. Thank you.

2 **MR. COHN-LEE:** Thank you.

3 **JUDGE HOUSE:** Thank you. [Parent]?

4 **[PARENT]:** Ms. Picton is a witness also.

5 **JUDGE HOUSE:** Ms. Picton is a witness for?

6 **[PARENT]:** The respondent.

7 **JUDGE HOUSE:** The District? Ms. Picton is
8 a witness.

9 **MR. COHN-LEE:** Although I don't believe
10 we'll be calling -- well, we can make that decision
11 at some point.

12 But for now, Ms. Picton, why don't we
13 excuse you.

14 **MS. PICTON:** Okay.

15 **MR. COHN-LEE:** My sense would be after
16 conversations with various staff, that just to save
17 time it's likely that we may not be calling Ms.
18 Picton.

19 But we'll kind of hold you in reserve, but
20 to be on the safe side, if we could also excuse you.

21 **JUDGE HOUSE:** All right. So you're
22 released for right now but not permanently excused.
23 And if you can just be available if needed. All
24 right?

25 **MS. PICTON:** (No audible response.)

1 **JUDGE HOUSE:** Thank you.

2 Okay. Then what I'm going to do, are you
3 going to go ahead and call Mr. Kolb?

4 **[PARENT]:** I have other questions.

5 **JUDGE HOUSE:** All right.

6 **[PARENT]:** Am I understanding that I can
7 call any of the District's witnesses on direct?

8 **JUDGE HOUSE:** When the District's
9 witnesses are testifying, if you did not actually
10 list them, you should be asking them cross-
11 examination questions.

12 If that somehow was unclear, then I will
13 allow you to ask them direct. You may not have
14 understood you needed to list them.

15 **[PARENT]:** I'm sorry. Bear with me. I
16 thought I read it in your latest order.

17 **JUDGE HOUSE:** And it may have been not as
18 clear as I would like to have said. I believe I
19 said if the witnesses are joint --

20 **[PARENT]:** That was it.

21 **JUDGE HOUSE:** And so it meant that you
22 would have had to have listed them also.

23 **[PARENT]:** Oh. Okay.

24 **JUDGE HOUSE:** And if there is an issue
25 with something that you want to ask and your not

1 having understood that, I'd like you to tell me, or
2 you would end up having to tell me if I was unclear,
3 you didn't understand that to begin with.

4 But I meant joint witnesses would be
5 called subject to direct questioning.

6 **[PARENT]:** Is it my understanding that I
7 can directly question them anyway, I'm not limited
8 to cross? If Mr. Cohn-Lee, specifically in the case
9 of Ms. Erickson, calls her as a direct witness, I
10 can then directly question her as well?

11 **JUDGE HOUSE:** Is there a reason that you
12 didn't list her on your witness list?

13 **[PARENT]:** It didn't dawn on me. It was a
14 misstep.

15 **JUDGE HOUSE:** That would not be generally
16 appropriate. The District needed to know who you
17 were going to call on direct.

18 **[PARENT]:** All right.

19 **JUDGE HOUSE:** And that's why we asked
20 about it.

21 **[PARENT]:** It's all right.

22 **JUDGE HOUSE:** Because of the scope of the
23 questions that Mr. Cohn-Lee will ask, it probably
24 will not be a problem on your cross-examination.

25 This is not as formal as a court hearing.

1 If it's within the scope of what was asked on
2 direct, you can ask on cross-examination.

3 **[PARENT]:** Okay.

4 **JUDGE HOUSE:** Just don't bring something
5 out of left field that he didn't talk about.

6 **[PARENT]:** Okay.

7 **JUDGE HOUSE:** All right? Okay. So if
8 we're ready, we can have Mr. Kolb come --

9 **MR. COHN-LEE:** And actually, before we
10 begin with that, Judge, I don't know how you want to
11 handle things in this case, but did you want to
12 address the issue of exhibits now or as we progress
13 through the hearing? Either way is fine.

14 **JUDGE HOUSE:** If there's not -- we'll see
15 how many objections that we get, and thank you for
16 bringing that up.

17 The exhibits for the District that I have
18 in addition to the argument in brief -- [Parent], I
19 have 1 through 15 from the District.

20 **MR. COHN-LEE:** We actually have -- it's 1
21 through 12, and we just inserted some additional
22 tabs in case we need to insert new exhibits down the
23 road. But it's 1 through 12.

24 **JUDGE HOUSE:** Okay. D-12 is 1 of 1. All
25 right.

1 Did you review those documents, [Parent]?

2 **[PARENT]:** Yes, Your Honor.

3 **JUDGE HOUSE:** Did you have any objection
4 to those documents? Provided there's some
5 foundation laid for them, and somebody will have to
6 tell me what they are and why they're relevant.

7 **[PARENT]:** The District's Exhibit D-8
8 through D-12.

9 **JUDGE HOUSE:** All right. And what's the
10 basis for the objection?

11 **[PARENT]:** Irrelevant and immaterial.

12 **JUDGE HOUSE:** Can you tell me, Mr. Cohn-
13 Lee --

14 **[PARENT]:** I don't believe they apply
15 toward determining or any evidence that would be
16 brought up for the complaint. They were after the
17 fact.

18 **JUDGE HOUSE:** All right. Mr. Cohn-Lee,
19 why don't we address those if you have a witness
20 that can address why these would be in here.

21 **MR. COHN-LEE:** Yes, and I can certainly
22 give you our initial responses to relevancy as well.
23 These documents D-8 through 12, all relate to the
24 IEP meeting that occurred on April 10th as set forth
25 in our brief.

1 And while I agree with [Parent] that
2 today's hearing is not about the correctness of the
3 substantive decision made on April 10th regarding
4 ESY, it is certainly relevant, and the data in these
5 documents is certainly relevant as to why the
6 District felt it was necessary to wait before making
7 an ESY determination until April 10th.

8 And certainly the data for example
9 contained in D-10 -- that also contains information
10 relating to both the winter break, which is clearly
11 a relevant period according to [Parent] in this
12 case, and the period before and after the spring
13 break, which again relates to the reasonableness of
14 why the District decided in November that it needed
15 to wait across two break periods before gathering
16 sufficient data and accurate data concerning ESY
17 recoupment and regression.

18 So I think that information is directly
19 relevant to the issue, really the issue of timing I
20 think that's at issue in this case.

21 **JUDGE HOUSE:** All right. I'm going to
22 defer ruling on those until the written order,
23 unless it becomes obvious to me, and I may exclude
24 them or not as I get testimony.

25 But at this point we'll go ahead and defer

1 ruling. So Exhibits D-1 through 7 are admitted, and
2 D-8 through 12 I have a standing objection I have
3 not ruled on.

4 **(Whereupon, District Exhibits D-1 through**
5 **D-7, respectively, were offered and admitted into**
6 **evidence.)**

7 **JUDGE HOUSE:** Anything else? All right.
8 So that's the District's exhibits.

9 Mr. Cohn-Lee, the exhibits that you
10 received from the petitioner --

11 **[PARENT]:** Excuse me, Your Honor?

12 **JUDGE HOUSE:** Yes.

13 **[PARENT]:** I have an amended exhibit list
14 based on the exhibits I received only last Friday.

15 **JUDGE HOUSE:** All right.

16 **[PARENT]:** Or I received them past the due
17 date --

18 **JUDGE HOUSE:** They're the --

19 **[PARENT]:** -- because of the motion.

20 **THE REPORTER:** One at a time, please.

21 **JUDGE HOUSE:** I'm sorry. My apologies.

22 I'm going to clarify I think what you're
23 referring to. You received documents in response to
24 your motion to compel.

25 **[PARENT]:** Correct.

1 JUDGE HOUSE: I gave you permission to
2 submit those late --

3 [PARENT]: Correct --

4 JUDGE HOUSE: -- up until and at the time
5 of hearing. You're saying that you have an amended
6 exhibit list that includes those documents?

7 [PARENT]: Yes.

8 JUDGE HOUSE: All right. Could you hand a
9 copy to Mr. Cohn-Lee and to myself.

10 [PARENT]: They're the new S-25, S-26, and
11 S-27.

12 JUDGE HOUSE: The exhibits themselves were
13 provided to the District prior to hearing; correct?

14 [PARENT]: The other -- the other --
15 everything else up through S-20 -- S-24 was provided
16 in advance.

17 JUDGE HOUSE: We have two additional
18 exhibits --

19 [PARENT]: Or three.

20 JUDGE HOUSE: Three? I'm sorry. There
21 was another one under there. Okay.

22 So I have the amended exhibit list through
23 S-27. And the copies that are being presented now
24 are S-25 -- which is labeled in your exhibit as
25 "Edmark Data"?

1 **[PARENT]:** Yes, Your Honor.

2 **JUDGE HOUSE:** -- S-26, two pages, labeled
3 -- and it's a different date, 2014 date, of Edmark
4 Data. And then S-27 is one page, and it's a 9/16 of
5 2013 "Edmark Data"; is that correct?

6 **[PARENT]:** Yes, Your Honor.

7 **JUDGE HOUSE:** Mr. Cohn-Lee, would you have
8 a look at those?

9 **MR. COHN-LEE:** I've completed my review,
10 Judge, and if I may respond.

11 **JUDGE HOUSE:** All right. We're going to
12 have your objections. Do you want to start with
13 those documents in particular or --

14 **MR. COHN-LEE:** Sure. We can do that.

15 **JUDGE HOUSE:** Or should we just start with
16 the beginning?

17 **MR. COHN-LEE:** No, we can start with
18 these.

19 First of all, I would note that the
20 District actually did not get these to [Parent]
21 late. But we actually did provide [Parent] the
22 documents I believe on the day that was the due date
23 for the submission of exhibits.

24 So I have never seen these previously
25 before as part of [Parent's] exhibit presentation;

1 and so I would object on that grounds. I think
2 submitting additional exhibits the day of hearing is
3 untimely.

4 Certainly if [Parent] was going to use
5 these, at a minimum I think they should have been
6 provided to me as District legal counsel at least at
7 some point before hearing, even if that was a
8 business day before hearing.

9 This is the first time I have seen these.
10 Accordingly, I have had no time to integrate these
11 or apprise witnesses as to their use by [Parent] as
12 part of his exhibits.

13 Beyond that, S-25, 1 and 2, I think some
14 of these are irrelevant as they do not necessarily
15 track the Student's IEP goals.

16 And as we explained in our prehearing
17 brief, ESY data is collected exclusively according
18 to the Student's then-existing IEP goals and
19 objectives, not generalized data. And that's what
20 S-26 is.

21 Regarding S-27, if you'll note on S-27 at
22 the top of the page, this is evidently a review of
23 information at a two-week progress meeting.

24 But the critical factor here is that this
25 meeting took place on September 16th, 2013.

1 The evidence will demonstrate that at this
2 time, [Student], the student, was operating under
3 [Student's] old IEP that [Student] had received from
4 the prior school district in Hawaii and that in
5 November [Student's] IEP was substantially changed
6 by the Grants Pass School District and the team
7 developed a brand new IEP with different goals.

8 Accordingly, this document, which could by
9 definition relate only to the prior old IEP, is
10 completely irrelevant to the issue of whether or not
11 a timely ESY determination was made for this summer
12 because for this summer the operative IEP in place
13 was the one that was developed on November 20th,
14 2013, which is after this data was discussed.

15 That's for those exhibits. And I can
16 proceed with the other exhibits, or we can do these
17 piece by piece.

18 **JUDGE HOUSE:** All right. I am going to at
19 this point again reserve ruling on those documents.
20 [Parent], I'll allow you to tell me when you
21 introduce those documents why they're relevant to
22 address the District's objection.

23 **[PARENT]:** Certainly.

24 **JUDGE HOUSE:** And we'll handle it that way
25 rather than have you try to give me testimony right

1 now on those documents.

2 Okay?

3 **[PARENT]:** Okay.

4 **JUDGE HOUSE:** So you need to come back to
5 those to address that objection.

6 And, Mr. Cohn-Lee, on the Parent's other
7 exhibits, do you have specific exhibits that you
8 have objections to?

9 **MR. COHN-LEE:** Yes, Judge.

10 **JUDGE HOUSE:** Give me the numbers that you
11 have objection to.

12 **MR. COHN-LEE:** Sure. The first objection
13 starting from the beginning of [Parent's] exhibit
14 binders deals with Exhibit S-6.

15 **JUDGE HOUSE:** I have duplicate copies.

16 **MR. COHN-LEE:** Just let me know when
17 you're ready.

18 **JUDGE HOUSE:** I've got it.

19 **MR. COHN-LEE:** If you look at S-6, it's
20 apparent given there's -- I have yellow highlighting
21 in my copy from [Parent], but you may have grey
22 highlighting on yours.

23 There's a highlighted provision that I
24 assume [Parent] is trying to use this Exhibit for.

25 And I gather that [Parent] is going to be

1 introducing this to try to suggest that the District
2 doesn't or systemically doesn't offer ESY services
3 to other students other than [Student].

4 As you've ruled previously before, the
5 central issue and the only issue for this hearing is
6 whether or not the District acted in accordance with
7 IDEA and ESY provisions with regard to this student.

8 Evidence regarding what was or was not
9 provided to other students is utterly irrelevant.

10 As I will discuss regarding another
11 exhibit, evidence of what other school districts
12 outside this school district do with other students
13 is completely irrelevant, and such information
14 should be stricken, or the whole exhibit should be
15 excluded.

16 I don't have an objection to the remaining
17 text in this, but it appears to me the sole issue or
18 the sole reason for its introduction is this
19 highlighted language, and I believe that's
20 completely irrelevant.

21 **JUDGE HOUSE:** [Parent], I can see things -
22 - I'm going to ask if you want to wait to present
23 your case to address this objection to the document.

24 Do you want to tell me what your response
25 is now, or do you want to wait until you introduce

1 the document?

2 **[PARENT]:** I can tell you now.

3 **JUDGE HOUSE:** Just tell me what -- if
4 you're not using this -- as I had stated, you can't
5 show generally a District practice. It has to be as
6 pertaining to your student and why this would be
7 relevant.

8 And if you can, just briefly tell me why
9 you think it will be.

10 **[PARENT]:** I have no response.

11 **JUDGE HOUSE:** What I'm going to do is wait
12 because, Mr. Cohn-Lee, I do know in one way if the
13 Parent argues the case or is going to show a set of
14 evidence that this will be relevant, it's relevant
15 as to whether this Student either had a history or
16 needed ESY in a particular way. And that only data
17 of the Student didn't appear from nowhere. The only
18 place that data would show up is in the history of
19 the student.

20 So it's not as if we can ignore any
21 information about that Student prior to that
22 November 20th meeting. And I will not exclude it on
23 that basis.

24 **MR. COHN-LEE:** And, Judge, it depends too
25 on the purpose for which [Parent] tries to introduce

1 that, but I guess I would ask that we wait and
2 reserve admission of that document because I think
3 it's up to [Parent] to try to make that argument.

4 But if it's solely to say a general
5 practice in the District, I would concur with you
6 that that is irrelevant.

7 I think the District also would take the
8 position that prior history -- and we will cover
9 this with Mr. Kolb and our witnesses.

10 Prior history actually would be legally
11 irrelevant because ESY data-gathering is dictated by
12 the student's current IEP.

13 Therefore, whether or not a student
14 received ESY in the past under a completely
15 different set of IEP goals and objectives is either
16 irrelevant or it has limited relevancy.

17 And we believe the testimony in this case
18 will show that the Student's IEP was changed in
19 November and that the data gathering that occurred
20 with regard to this summer had to be following those
21 goals and objectives.

22 **JUDGE HOUSE:** Okay. That was a mixed
23 argument on some issues, and what I'm going to hear
24 from Mr. Kolb won't be arguments of law, it will be
25 telling of facts I would assume.

1 **MR. COHN-LEE:** And also the District
2 policy, which is based on the law.

3 **JUDGE HOUSE:** You can tell me about the
4 District policy. Okay. All right. So I will
5 reserve ruling on S-6.

6 Was there another document on the same --

7 **MR. COHN-LEE:** Yes. On the same -- I'm
8 going to jump around a little and these other --

9 **[PARENT]:** Excuse me. Oh. I'm sorry.
10 May I request a two-minute recess?

11 **JUDGE HOUSE:** Sure. We can go off the
12 record, and let's just do it for five minutes. If
13 anyone needs a rest room break, please take one now.

14 **(A recess was taken from 9:41 a.m. to 9:49**
15 **a.m.)**

16 **JUDGE HOUSE:** What I think might be more
17 efficient is that as -- [Parent], at some point
18 you're going to tell me why these documents need to
19 be admitted.

20 At that time we'll speak to the objection,
21 and then I'll either rule at that time or I'll rule
22 in the order. And so -- unless you have specific
23 ones you do not object to.

24 **MR. COHN-LEE:** Well, it probably makes
25 sense to just go through them, but there is one that

1 was in a similar vein.

2 There is one other exhibit that I think
3 kind of stands out along a similar vein of what we
4 were just talking about, which is Exhibit S-6. If
5 you turn to Exhibit S-18.

6 **JUDGE HOUSE:** Okay. Yes.

7 **MR. COHN-LEE:** Exhibit S-18 appears to be
8 an email from Leah Dean, who again is an employee
9 from a completely different school district -- it's
10 the Eagle Point School District -- to [Parent].

11 And [Parent] had asked them for their
12 total student enrollment, number of students on an
13 IEP, and number of students receiving ESY services,
14 and Ms. Dean again responding generally as to the
15 number of students receiving either ESY or what she
16 calls a "summer school program" and the number of
17 students on an IEP within that subgroup.

18 Again, this is completely irrelevant, what
19 another school district does.

20 **JUDGE HOUSE:** I understand the objection.
21 [Parent], why would this be relevant to your
22 student?

23 **[PARENT]:** I have no objection to his
24 objection.

25 **JUDGE HOUSE:** In other words, you withdraw

1 the exhibit?

2 [PARENT]: I withdraw the exhibit.

3 JUDGE HOUSE: So S-18 has been withdrawn.

4 (Whereupon, Exhibit S-18 was withdrawn
5 from evidence.)

6 MR. COHN-LEE: And, Judge, the remaining
7 exhibits, we can address them as [Parent] moves to
8 introduce them as evidence. I think that probably
9 would be more efficient.

10 JUDGE HOUSE: All right. And I'll just
11 clarify, and there's a very fine line, and there
12 will be objections -- and actually if it comes to
13 that point, Mr. Cohn-Lee, I'll just give you a
14 standing objection on that.

15 I suspect that the evidence in this case
16 will walk a line between what should be covered
17 under the stated complaint, which is an allegation
18 that the District is not complying in general to the
19 requirements, and what is appropriate for a due
20 process hearing, which is whether or not the
21 District in this case provided FAPE to this student
22 as required under IDEA.

23 So there were elements of both in your
24 complaint, and I parsed those out.

25 If it starts during the hearing to go

1 towards elements that allege a general failure to
2 comply, that won't be allowed in the hearing. But
3 information that shows that the District didn't
4 provide FAPE to your student would be allowed.

5 So that's just the line that we're going
6 to be walking during this hearing, and I have
7 already foreseen that. So we'll just deal with it
8 as it comes up.

9 [PARENT]: Okay.

10 JUDGE HOUSE: Okay? All right. Are you
11 ready to call your first witness?

12 [PARENT]: Just procedurally, when I want
13 to present an Exhibit, am I moving to present an
14 Exhibit?

15 JUDGE HOUSE: No, just tell me we're going
16 to look at "S" whatever.

17 [PARENT]: Okay.

18 JUDGE HOUSE: And then I'll ask Mr. Cohn-
19 Lee if he has any objections.

20 I understand that you have offered all of
21 the exhibits that you have given me. So they're
22 offered in evidence at this point with the exception
23 of S-18.

24 If there's another one, something that
25 comes up that you want to withdraw, you can do that.

1 Otherwise, all the exhibits that you sent are
2 considered offered at this point. I won't make you
3 go through that formality.

4 Okay?

5 **[PARENT]:** Okay.

6 **JUDGE HOUSE:** But Mr. Cohn-Lee will
7 generally probably do it because he's used to doing
8 it. He may or may not object to the exhibit. All
9 right.

10 **(Whereupon, Parent's Exhibits S-1 through**
11 **S-17, respectively, and Exhibits S-19 through S-27,**
12 **respectively, were offered into evidence.)**

13 **JUDGE HOUSE:** So may we call Mr. Kolb?

14 **[PARENT]:** Yes.

15 **JUDGE HOUSE:** Mr. Kolb, if you would
16 (indicating). I'll try to move my binders.

17 **THE REPORTER:** Here (indicating)?

18 **JUDGE HOUSE:** No, it's all right. I'll
19 find a spot. And I'll have it a little bit more
20 organized by the time we get back after the next
21 break.

22 Okay. Mr. Kolb, first thing I'm going to
23 do is swear you in.

24 **(The witness is sworn.)**

25 **JUDGE HOUSE:** Would you please state and

1 spell your first and last name for the
2 transcriptionist.

3 **THE WITNESS:** Kirk Kolb, K-i-r-k K-o-l-b.

4 **JUDGE HOUSE:** And, Mr. Kolb, [Parent] is
5 going to ask you questions initially. And then if
6 there are objections, I would ask that you wait
7 until I rule on it and either answer or not answer.
8 And Mr. Cohn-Lee may have questions, and I may have
9 questions.

10 If Ms. Yates indicates that we need to
11 speak slower, louder, or anything, I've asked her to
12 just go ahead and let us know. So she'll interrupt,
13 and then let's go.

14 Okay?

15 **THE WITNESS:** Okay.

16 **JUDGE HOUSE:** All right. [Parent], go
17 ahead, please.

18 KIRK KOLB, called as a witness on behalf of the
19 Student, having been first duly sworn, was examined
20 and testified as follows:

21 **DIRECT EXAMINATION**

22 **BY [PARENT]:**

23 **Q. Mr. Kolb, what position do you hold with**
24 **the District?**

25 **A. I'm currently the director of special**

1 services.

2 Q. And, Mr. Kolb, were you present at the IEP
3 meetings on November 20th, 2013, and March 18th,
4 2014?

5 A. I was present at both of those meetings.

6 Q. And under what capacity were you at those
7 two meetings?

8 A. I was -- ultimately became the District
9 rep.

10 Q. So you were the District representative at
11 both those meetings?

12 A. Correct.

13 Q. Were you there under any other capacity?

14 A. As a -- somebody who supported [Student]
15 over the summer, I felt I could contribute in that
16 fashion.

17 Q. All right. You say that you supported
18 [Student] over the summer.

19 Were you ever a teacher for [Student]?

20 A. Over the summer, technically, no.

21 Q. Did you ever provide direct -- did you
22 ever provide direct instruction to [Student]?

23 A. No.

24 [PARENT]: All right. I'd like to
25 reference Exhibit S-3. And I'm going to ask some

1 questions about it, and I have a copy if Mr. Kolb
2 would like to look at it while I'm referencing it.

3 JUDGE HOUSE: Yes.

4 MR. COHN-LEE: Yeah, he needs to look at
5 it.

6 [PARENT]: This is a copy just for him.

7 MR. COHN-LEE: Okay.

8 BY [PARENT]:

9 Q. Mr. Kolb, do you recognize this document?

10 A. I do.

11 Q. What is this document?

12 A. This is -- it appears to be the guidance
13 from our special ed handbook regarding the extended
14 school year for our special ed staff.

15 Q. And do you have any -- do you have any
16 idea how long this document has been in existence?

17 A. Since -- this particular document, in
18 August of 2013.

19 Q. So --

20 A. It was revised in August of 2013, is the
21 most recent copy, or version.

22 Q. And are you aware of who revised this
23 document for the District?

24 A. I did.

25 Q. And what did you base your revisions upon?

1 A. Based it on the OARs.

2 Q. Did you as well base it on the federal
3 regulations or -- that's it. Did you as well base
4 it on federal regulations?

5 A. The federal regulations were reviewed as
6 part of the process for revising it, yes.

7 Q. So is it fair to say that when you revised
8 this document in August of 2013, you based this
9 document on the OARs -- which is the Oregon
10 Administrative Rules?

11 A. Correct.

12 Q. -- and the federal guidelines of IDEA?

13 A. And the federal guidelines were reviewed
14 as part of the process.

15 Q. Would you say that you are very familiar
16 with the OARs?

17 A. Yes.

18 Q. Would you say that you are very familiar
19 with the federal regulations?

20 A. Not as familiar.

21 [PARENT]: Okay. I'm going to reference
22 this document now.

23 JUDGE HOUSE: Let me ask if -- Mr. Cohn-
24 Lee, any objection to S-3?

25 MR. COHN-LEE: No, Judge.

1 JUDGE HOUSE: S-3 is admitted.

2 (Whereupon, Parent Exhibit S-3 was
3 admitted into evidence.)

4 BY [PARENT]:

5 Q. Under "General Guidelines," No. 2, it
6 states, "ESY is intended to maintain a skill or
7 behavior directly related to one or more IEP goals."

8 Was that existing prior to the August, or
9 was that something that you revised in August?

10 A. I don't recall.

11 Q. Okay.

12 A. I don't have the prior document in front
13 of me.

14 Q. Based on your knowledge of OARs -- (to
15 Judge House) and I'd like to reference my Exhibit S-
16 4 at this time. And I have a copy for Mr. Kolb as
17 well.

18 JUDGE HOUSE: Mister --

19 [PARENT]: And she has a copy.

20 JUDGE HOUSE: I do have a copy.

21 THE WITNESS: Are we done with this?

22 [PARENT]: Oh, no.

23 THE WITNESS: Okay.

24 JUDGE HOUSE: Just a moment. Mr. Cohn-Lee
25 hasn't objected, but this appears to be the Oregon

1 Administrative Rule, and you have also ODE guidance
2 added.

3 Okay. For purposes of the record, that
4 portion of S-4, I'm just going to go ahead and
5 exclude it. It's not that it can't be referenced
6 right now. It is not technically evidence. It's
7 the law.

8 The law can be argued. You can refer to
9 it. We'll look at it. It's not a document in
10 evidence.

11 So as far as your just talking about it,
12 that's fine. It's not part of the evidentiary
13 record except for that portion of page 2 which
14 appears to reference ODE guidance regarding ESY.

15 Okay?

16 **[PARENT]:** Okay. I understand. So if
17 it's the law, it's not an exhibit. It's just the
18 law. But if I have a copy of it because I want to
19 make reference to it and ask a question, it's okay
20 to provide it?

21 **JUDGE HOUSE:** That's fine. So S-4, page
22 1, is excluded. S-4, page 2, paragraph beginning
23 "ODE guidance regarding ESY" and down -- let me ask
24 Mr. Cohn-Lee, do you have any objection to that
25 portion of this exhibit?

1 **MR. COHN-LEE:** I do not, Judge. And I can
2 ask questions of Mr. Kolb that will clarify actually
3 how this document integrates with the first page
4 that I think will clarify this later.

5 It's in our exhibit book as well as an
6 integrated document. But we can address it at that
7 time.

8 **JUDGE HOUSE:** Okay. And if in another
9 context it's not a document [Parent] created but
10 it's one document that the District uses in this
11 combined format, it may be that it's relevant.

12 And so it may not be excluded. I may
13 change the ruling if that's what it is.

14 But let me ask Mr. Kolb the question.

15 Is this -- or actually, [Parent], where
16 did this document come from?

17 **[PARENT]:** It came, exactly as you stated,
18 from the District as part of a packet regarding
19 their ESY procedures and guidelines, and I can
20 clarify this to --

21 **JUDGE HOUSE:** That's all right. I'm going
22 to reverse my ruling. Excuse me. It's just
23 normally the law is not part of a record.

24 To the extent that this is a document that
25 the District provided and that they rely on, it is

1 admissible.

2 So it doesn't mean it's the law. It may
3 even have typos. It may not be correct. It's
4 something they rely on, and that's what it's
5 admitted for.

6 **JUDGE HOUSE:** Okay. Go ahead and ask him
7 about it now.

8 **BY [PARENT]:**

9 **Q. Mr. Kolb, did you create this document?**

10 A. This was copied off the Oregon Department
11 of Education's web site.

12 **Q. Okay. And to get back to S-3, who is this**
13 **provided to, this document, as a general matter of**
14 **course?**

15 A. All of our special education providers.

16 **Q. One time? Every year? Every time it's**
17 **amended or --**

18 A. Every time it's amended or revised.

19 **Q. And when is Exhibit S-4 provided to your**
20 **employees?**

21 A. It would also be included with this
22 whenever -- whenever that guidance documents are
23 revised.

24 **Q. And you stated earlier -- I'm sorry. I'm**
25 **going to backtrack.**

1 Are these the same documents that you
2 would normally provide a parent?

3 A. Upon request.

4 Q. Did you provide these documents to me as a
5 parent?

6 A. Yes.

7 Q. To the best of your knowledge -- and I
8 think you stated it previously -- referencing
9 Exhibit S-4, OAR 581-015-2065, you basically just
10 copied and pasted that out of I would assume some
11 state database or state web site?

12 A. This was pulled off the Oregon Department
13 of Education's web site.

14 Q. Okay. As a copy, or did you transcribe
15 it?

16 A. As a copy.

17 Q. So to the --

18 A. Copy and paste.

19 Q. Sorry. So to the best of your knowledge
20 then, this is the actual Oregon Administrative Rule?

21 A. Yes.

22 Q. Okay. All right. To get back to Exhibit
23 S-3, No. 2, under "General Guidelines," "ESY is
24 intended to maintain a skill or behavior directly
25 related to one or more IEP goals" -- how did you

1 **come up with No. 2?**

2 A. I don't recall if I came up with that or
3 that was in prior guidance.

4 **Q. Or what? I'm sorry?**

5 A. Or if it existed prior to -- I don't
6 recall the revisions that were made on this
7 document.

8 **Q. Okay. Looking at No. 2 and referencing**
9 **Exhibit S-4, the OARs applying to extended school**
10 **year, do you find anywhere in the OARs where it**
11 **would provide that as law, that ESY is intended to**
12 **maintain a skill or behavior directly related to one**
13 **or more IEP goals?**

14 **And go ahead, take your time to review it.**

15 A. To the best of my ability to interpret the
16 law, I believe it's Section (4). And the purpose of
17 extending the school year is to maintain the child's
18 learning skills or behavior, not the teaching of new
19 skills or behaviors.

20 **JUDGE HOUSE:** Can you be more clear when
21 you say "Section (4)"?

22 **THE WITNESS:** Section (4) of the OAR. And
23 I'm not an expert on referencing the law.

24 **JUDGE HOUSE:** So you're reading from S-4,
25 OAR 581-015- --

1 THE WITNESS: Correct --

2 JUDGE HOUSE: -- -2065, Section (4)?

3 THE WITNESS: Correct.

4 JUDGE HOUSE: Okay.

5 Go ahead, [Parent].

6 BY [PARENT]:

7 Q. So to clarify, you believe that the
8 Section (4) is just referenced, which states "The
9 purpose of" -- I'm going to abbreviate -- "ESY
10 services is the maintenance of the child's learning
11 skills or behavior, not the teaching of new skills
12 or behavior," relates to your general guidance
13 stating that "ESY is intended to maintain a skill or
14 behavior directly related to one or more IEP goals"?

15 A. Can you state that again?

16 Q. I'm trying to get out of you why you feel
17 -- let me restate this whole question. Okay?

18 A. Okay.

19 Q. What I'm trying to get from you is how did
20 you determine that in your "General Guidelines" of
21 "ESY is intended to maintain a skill or behavior is
22 directly related to one or more IEP goals" -- how do
23 you get to there from paragraph (4) under OAR 581-
24 015-2065, "The purpose of extended school year is
25 the maintenance of the child's skills or behavior,

1 not the teaching of new skills or behavior"?

2 I'm trying to -- why do --

3 A. I'm going to do my best at this. Extended
4 school year is intended for students who are
5 eligible under IDEA.

6 The IEP is drafted as a comprehensive
7 document to address all of the student's needs,
8 identify -- skills and behaviors are determined by
9 the IEP team. Therefore, we collect data on those
10 skills and behaviors.

11 If new behaviors or skills need to be
12 introduced, we would expect that to happen through
13 the IEP process.

14 Q. Would you agree that nowhere in the OAR,
15 specifically paragraph (4) that you referenced, does
16 it state anything relating to IEP goals? Would you
17 agree?

18 MR. COHN-LEE: Well, I'm going to object
19 because I think it misstates the clear text of the
20 evidence in S-4.

21 JUDGE HOUSE: Actually I think that's a
22 fair question if you're looking at Section (4). The
23 question would be: Do you see the reference in
24 Section (4) of the OAR-cited provisions that require
25 the language that the District used in stating

1 "maintain a skill or behavior directly related to
2 one or more IEP goals" -- is that language in the
3 provision.

4 **MR. COHN-LEE:** And actually I think
5 [Parent] said in particular (4) but in the OARs in
6 general as well. I mean I can bring this out
7 through my examination, but the text of the document
8 in fact does have a reference to the IEP.

9 **JUDGE HOUSE:** All right.

10 But, [Parent], when you said -- did you
11 mean in the OARs in general, in the OARs provided in
12 specific numbers --

13 **[PARENT]:** I'll ask it as two separate
14 questions.

15 **JUDGE HOUSE:** All right. Go ahead,
16 please.

17 **BY [PARENT]:**

18 **Q.** Do you see a reference to -- do you see a
19 reference that ESY is intended to maintain skills or
20 behaviors only related to IEP goals as you noted in
21 No. 2 of your General Guidelines in Section (4) of
22 the OARs?

23 **A.** Not specifically in Section (4).

24 **Q.** Then I'll ask the next question.

25 Do you see anywhere in the OARs from

1 **Exhibit 4 where it would support your No. 2 General**
2 **Guideline that "ESY is intended to maintain a skill**
3 **or behavior related to only IEP goals"?**

4 A. I would say that in Section (7), for the
5 purposes of this rule, "extended school ESY" means
6 "special education-related services that fall under
7 the category of Subsection (B) in accordance with
8 the child's IEP."

9 Q. So are you suggesting that the only thing
10 that matters in a child's IEP are the goals?

11 A. No.

12 Q. Do you agree that Section (7) of the OARs
13 that reads "For the purpose of this rule, 'ESY'
14 means 'special education and related services,'"
15 that Subsection (B) in accordance with the child's
16 IEP could have to do with anything that's in the
17 child's IEP, including FAPE?

18 MR. COHN-LEE: I'm going to object to the
19 term and use "FAPE."

20 [PARENT]: Free Appropriate Public
21 Education.

22 MR. COHN-LEE: I think that's vague.

23 JUDGE HOUSE: I think the question is
24 overbroad. So I'm going to sustain the objection.

25 [PARENT]: All right. Let me reask it.

1 Q. So it's your contention that your General
2 Guideline or the District's General Guideline No. 2,
3 "ESY is intended to maintain a skill or behavior
4 directly related to one or more IEP goal," is in
5 accordance is the ESY OARs because in Section (7),
6 paragraph (B), it states that "'Extended school
7 year' means 'special education and related services
8 that are provided in accordance with the child's
9 IEP'?"

10 A. Yes.

11 Q. So to clarify, you go from what the OARs
12 are stating -- which we just covered, that "'ESY'
13 means 'special education and related services that
14 are provided to a child with a disability in
15 accordance with the child's IEP'" -- using that and
16 using "The purpose of extended school year is the
17 maintenance of the child's learning skills or
18 behavior, not the teaching of new skills or
19 behavior" -- using both of those sections of the OAR
20 as a basis, you're maintaining that ESY is intended
21 to maintain a skill or behavior directly related to
22 one or more IEP goals?

23 A. Additionally, the guidance -- excuse me --
24 the OAR references to evaluate regression and
25 recoupment -- those are identified through IEP goals

1 and objectives, hence, affording us a target to make
2 those determinations.

3 Q. Since you brought that up, maybe you could
4 point out to me in the OAR where it states
5 "regression and recoupment" -- how did you put it?

6 (To the reporter) Could you read back his
7 answer, please.

8 THE REPORTER: Sure can.

9 (The record was read by the reporter as
10 follows:

11 ANSWER: "Additionally, the guidance --
12 excuse me -- the OAR references to evaluate
13 regression and recoupment -- those are identified
14 through IEP goals and objectives, hence, affording
15 us a target to make those determinations.")

16 [PARENT]: Thank you.

17 THE REPORTER: You're welcome.

18 BY [PARENT]:

19 Q. So you're clear on how you answered that
20 question?

21 A. (No audible response.)

22 Q. Could you explain to me --

23 A. Yes, I believe I am understanding.

24 Q. I know you nodded. I didn't catch it.

25 So could you point out to me in the OARs

1 **where it states what you just said, that regression**
2 **and recoupment must be based on IEP goals?**

3 A. So since we must -- we must base our ESY
4 determination on regression and recoupment, the IEP
5 is written to identify the needs of the student as
6 defined in goals and objectives.

7 Those are the data we collect to make ESY
8 determinations.

9 **Q. Didn't answer the --**

10 **JUDGE HOUSE:** I'm going to ask a question.
11 I apologize.

12 Did you say since we must base the ESY on
13 regression and recoupment?

14 **THE WITNESS:** Excuse me. Since the
15 criteria must include regression and recoupment data
16 according to the OAR Subsection (6). There is
17 usually five.

18 **JUDGE HOUSE:** All right.

19 **[PARENT]:** Well, I can't question him on
20 the "must," but I can clarify that.

21 **Q. I'm going to repeat the question because I**
22 **don't believe I got an answer.**

23 **Could you please point out anywhere**
24 **specifically that OAR states that you must base**
25 **regression and recoupment on IEP goals?**

1 A. The term "IEP goals" is not cited directly
2 in the OAR.

3 Q. Okay. No. 2 under your "General
4 Guidelines," "ESY is intended to maintain a skill or
5 behavior directly related to one or more IEP goals"
6 -- as far as you're concerned as the director of
7 special education, that is an interpretation of the
8 OARs that you utilized as a General Guideline?

9 A. Correct.

10 Q. And is it your -- let me rephrase that.
11 Do you feel that number -- "feel" is not
12 correct either.

13 Do you believe No. 2 under the "General
14 Guidelines" to be in alignment with the OARs?

15 A. Yes.

16 Q. Okay. I'm going to now reference -- it
17 was my Exhibit S-2, but it's not an exhibit is my
18 understanding. It's just federal regulation.

19 JUDGE HOUSE: All right. We can look at
20 what you've marked as S-2, and you can reference it
21 again. It won't be a document in evidence. Yes.

22 [PARENT]: Okay.

23 JUDGE HOUSE: But please provide a copy to
24 the witness.

25 BY [PARENT]:

1 Q. Mr. Kolb, on a copy of the federal
2 regulations that I just provided you, I'm looking
3 directly at 300.106, "Extended School Year
4 Services."

5 Are you with me on that on the top right?

6 A. I am.

7 Q. Are you familiar with this part of the
8 regulation?

9 A. I am mildly familiar.

10 Q. You told me earlier that your General
11 Guidelines for extended school year are based on the
12 OARs and the federal regulations?

13 A. Yes. The federal regulations inform our
14 guidance as well.

15 Q. Do you feel as a matter of fact that the
16 Oregon Administrative Rules supersede federal
17 regulations?

18 A. No.

19 Q. Okay. Do you see the federal regulations
20 as being as important as the Oregon Administrative
21 Rules?

22 A. I see the federal regulations, because
23 it's IDEA, is going supersede state guidance is my
24 understanding of the law.

25 Q. All right. In Section 106, and this is

1 just -- 300.106, pardon me, and this is just a broad
2 almost definition of extended school year services,
3 do you see anywhere in "Extended School Year
4 Services" under 300.106 that might support your
5 General Guideline No. 2, where it states, "ESY is
6 intended to maintain a skill or behavior directly
7 related to one or more IEP goal"?

8 A. I'm going to have to read through the
9 document --

10 Q. Take your time --

11 A. -- once or twice here.

12 (Reading document.)

13 I believe in general that support or District
14 guidance -- let's see how to state this. I believe
15 it's Section (3), Subsection (1), Subsection -- I
16 don't know how to say -- (ii), in accordance with
17 the child's IEP as well as to meet the standards of
18 the SEA, um --

19 Q. I'm going to reask --

20 A. -- that first view. I believe those two
21 elements of the federal law support the guidance
22 that we have as a District.

23 Q. Okay. Now, to clarify, I'm not asking you
24 about the guidance. I'm asking do you see anywhere
25 in Section 300.106 where you could interpret this to

1 state that ESY is intended to maintain a skill or
2 behavior directly related to one or more IEP goal?

3 A. So as I stated, we're required to consider
4 ESY in accordance with the child's IEP and meet the
5 standards of the State Education Agency.

6 Q. In 300.106, Section (2), it states that
7 "extended school year services must be provided on
8 an individual basis in accordance with 300.320
9 through 324" and that "the services are necessary
10 for the provision of FAPE to the child."

11 How do you interpret No. 2, Section (2) of
12 300.106?

13 A. IEP team determines student by student
14 that -- whether or not ESY is necessary for FAPE.

15 Q. Would you agree that it would be based on
16 Sections 300.320 through Sections 300.324 of the
17 federal regulation?

18 A. Excuse me?

19 Q. Would you agree based on what you just
20 said that, in determining the need and based on the
21 IEP, that you would use Sections 300.320 through
22 300.324 as guidance?

23 A. I'm not familiar -- I can't recite for you
24 the content or subject area of those two federal
25 statutes or, whatever you call them.

1 Q. I have a copy of them, and I'm going to
2 give them to you, but I'm just asking if you agree
3 at this point, not whether you can, you know --

4 A. I can't agree that the District guidance
5 represents those without those in front of me.

6 Q. That wasn't the question. The question
7 was: Does this federal regulation require you to
8 provide ESY if the child's IEP team determines on an
9 individual basis in accordance with 320 through 324?

10 A. Yes. That's how the federal --

11 Q. Would you agree with that?

12 A. I agree with the federal law.

13 Q. Okay.

14 JUDGE HOUSE: Please, if you can, don't
15 talk over each other.

16 THE WITNESS: I'm sorry.

17 JUDGE HOUSE: I do it too.

18 [PARENT]: My S-5 is just additional
19 federal regulations, inclusive of 300.320 through
20 300.324.

21 JUDGE HOUSE: All right. Do you have a
22 copy?

23 [PARENT]: I have a copy for Mr. Kolb.

24 JUDGE HOUSE: All right. For clarity of
25 the record, S-2 is not admitted because it's a copy

1 of the law, and S-4 to the extent that it's a copy
2 of the law is not admitted. We're just using it for
3 reference.

4 [PARENT]: S-5, Your Honor.

5 JUDGE HOUSE: S-5. Thank you.

6 BY [PARENT]:

7 Q. Mr. Kolb, if you could, turn to page 4 of
8 4, the last page in that packet that I just handed
9 you.

10 A. (Witness complies.)

11 Q. 300.324 of the Federal Regulations for
12 Development, Review, and Revision of IEP. 106 --
13 300.106 references 324 as how you determine if ESY
14 is necessary based on 324.

15 Would you concur with that statement?

16 A. I would concur that 324 is embedded in the
17 required part of 106.

18 Q. Thank you. I'm going to give you a few
19 moments to go through 300.324. And it just takes
20 that first column. And I believe if you go through
21 just that first column, everything past Section (4)
22 is agreements, amendments, and changes.

23 Well, I'm going to give you a few moments.
24 Okay? And you can look at as much as of it as you
25 want.

1 But what I'm looking for is I'm going to ask
2 you the same question as I did regarding the OARs,
3 is: Do you see any section in 300.324 that would
4 support the General Guidelines as enumerated in No.
5 2, that ESY is intended to maintain a skill or
6 behavior directly related to one or more IEP goal?

7 A. I'm probably going to ask you to restate
8 the question after reviewing this.

9 **Q. Okay.**

10 **JUDGE HOUSE:** Off the record for just a
11 moment, please.

12 **(A discussion is held off the record.)**

13 **JUDGE HOUSE:** Housekeeping matter
14 discussed. [Parent], in the interest of having us
15 move a little faster, I think that your general
16 question is you're asking the basis of this
17 witness's knowledge based on his understanding of
18 the law whether or not the District is in compliance
19 with the federal laws and rules in its policy. And
20 you're asking very specific provisions.

21 But generally you could just ask that, but
22 the argument as to whether it is or is not is
23 actually going to be a legal issue.

24 The reason I've allowed the questions is
25 that he is an individual that is responsible as I

1 understand it for the policy, revised policy.

2 So without going through to say "In each
3 case, do you see that language," you could just ask
4 the general question and then argue legally later
5 that it is or isn't in there.

6 [PARENT]: Okay.

7 JUDGE HOUSE: Does that make sense?

8 [PARENT]: Yes. Like in post-hearing?

9 JUDGE HOUSE: Yes. As long as you have
10 his answer as to whether or not he believes it does
11 support it, that's sufficient. Whether it does or
12 does not is as a matter of law, question of law.

13 [PARENT]: Okay. So when would I address
14 that, or would that be up to the discretion of the
15 judge?

16 JUDGE HOUSE: That's legal argument. You
17 can do it as closing. It's something I have to look
18 at anyway.

19 [PARENT]: Okay. And we're doing a
20 written closing; correct?

21 JUDGE HOUSE: Yes.

22 [PARENT]: Okay.

23 JUDGE HOUSE: So I'm not saying that you
24 can't ask any more questions. But I think that what

25 --

1 [PARENT]: It's okay --

2 JUDGE HOUSE: -- you're doing is -- you've
3 made the point.

4 [PARENT]: So I'll rephrase the question.

5 JUDGE HOUSE: All right. Go ahead.

6 BY [PARENT]:

7 Q. Do you, Mr. Kolb, believe that General
8 Guideline No. 2, ESY, is intended to maintain a
9 skill or behavior directly related to one or more
10 IEP goal --

11 A. Yes --

12 Q. -- is --

13 JUDGE HOUSE: Sorry. Just a moment. (To
14 the witness) He just read. He hasn't asked a
15 question.

16 THE WITNESS: Okay.

17 BY [PARENT]:

18 Q. -- is supported by Federal Regulation
19 300.324, that development, review, and revision of
20 an IEP?

21 A. I believe it is supported by federal law.

22 Q. Specifically -- and I'm going to ask this
23 specifically for clarification, that ESY should only
24 be directly related to one or more IEP goals as is
25 written in your General Guidelines?

1 A. Yes.

2 Q. Okay. I'm going to reference your "ODE
3 Guidance Regarding ESY," which is on page 2 of 2 in
4 Exhibit 4.

5 Are you with me?

6 A. I am.

7 Q. Where did this come from?

8 A. Oregon Department of Education's web site
9 on special education.

10 Q. And you copied and pasted it off their web
11 site --

12 A. Correct --

13 Q. -- or it was already in there, in this
14 document?

15 A. Oh. This was already in there.

16 Q. So did you originally create this
17 document, or was this document in existence when --
18 I don't know when you took your position.

19 A. This document -- I don't know the
20 origination date of this. It did occur within the
21 last three years.

22 Q. So this document wasn't even in existence
23 three years ago? And I'm referring to Exhibit S-4,
24 the ESY, OAR, and ODE guidelines --

25 A. I can't necessarily speak to that. Let me

1 correct my answer.

2 This document was revised in August. It
3 existed prior to, and I do not know the origination
4 date.

5 **JUDGE HOUSE:** Clarification. When you say
6 "this document," which document are you referring
7 to?

8 **THE WITNESS:** I'm sorry. I would say the
9 entire "Guidance" section from our special ed
10 handbook which includes Exhibits S-3 and -- excuse
11 me -- 4.

12 **JUDGE HOUSE:** (To [Parent]) And now I need
13 you to answer that question again for me. S-3 and
14 S-4 -- you asked were they in existence when?

15 **[PARENT]:** I was just referencing S-4.

16 **JUDGE HOUSE:** All right.

17 **[PARENT]:** And I wanted to know was S-4 --
18 as a package, the ESY, OAR, and ODE guidance -- was
19 this in existence prior to he -- prior to Mr. Kolb
20 amending it in August.

21 **THE WITNESS:** Yes.

22 **BY [PARENT]:**

23 **Q. When did you take the position of special**
24 **ed director for Grants Pass School District?**

25 **A. July of 2011.**

1 Q. So roughly three years ago?

2 A. Correct.

3 Q. Had you ever amended this document
4 previous to August?

5 A. I had not.

6 JUDGE HOUSE: Amended, again, "this
7 document"?

8 [PARENT]: This document, S-4.

9 JUDGE HOUSE: Thank you.

10 [PARENT]: Exhibit 4.

11 JUDGE HOUSE: S-4 prior to August of --

12 [PARENT]: 2013.

13 Q. Correct? Is that when you stated that you
14 amended it, August of 2013?

15 A. This was revised in August of 2013.

16 JUDGE HOUSE: And had you ever amended S-4
17 prior to August of 2013?

18 THE WITNESS: I had not.

19 BY [PARENT]:

20 Q. So it was in existence in its static form
21 when you started?

22 A. Yes.

23 Q. When did you first see Exhibit S-4?

24 A. From actually going back to when I was a
25 special education teacher, South Middle School,

1 approximately 10 to 12 years ago.

2 Q. Regarding directly the ODE guidance
3 regarding ESY, the second paragraph or section of
4 the Exhibit S-4 as a whole, was that in the
5 existence -- (to Judge House) are you clear?

6 JUDGE HOUSE: Yeah. I'm just looking at
7 something.

8 [PARENT]: Oh. Okay.

9 Q. Did you amend any portion of the ODE
10 guidance regarding ESY in August of 2013?

11 A. I can't tell you if only ODE amended it
12 because I took it directly from ODE's guidance page.

13 Q. So you did? The answer is yes because you
14 would have copied and pasted it in August of two --
15 correct me if I'm wrong. Did you copy and paste
16 what's now on ODE guidance regarding ESY on August
17 13th and placing it into document Exhibit S-4?

18 A. I updated it. I copied and pasted it as
19 an update should it have been revised.

20 Q. Okay. Referencing that ODE guidance, do
21 you feel that the ODE guidance section of Exhibit 4
22 supports your General Guideline No. 2, that is ESY
23 is intended to maintain a skill or behavior directly
24 related to one or more IEP goal?

25 A. Yes.

1 Q. All right. I'm returning back to Exhibit
2 S-3.

3 Your General Guideline No. 3, "All members
4 of the IEP team can request ESY."

5 JUDGE HOUSE: Is there a question?

6 [PARENT]: Yes. I'm trying to phrase it
7 appropriately.

8 JUDGE HOUSE: Sorry.

9 BY [PARENT]:

10 Q. Is it the District's policy that a member
11 of the IEP team must request ESY services?

12 A. Somebody has to initiate the consideration
13 of ESY.

14 Q. So No. 3 of General Guidelines is
15 basically -- No. 3 on Exhibit 3 under your "General
16 Guidelines" where it states, "All members of the IEP
17 team can request ESY," that suggested that someone
18 on the team must initiate looking at ESY? Is that
19 what you just said?

20 A. We're required to consider ESY under IDEA.
21 So we do that at least annually for every student
22 under IEP.

23 Q. Then what's the point of No. 3? If you're
24 required to do it and you do it as a matter of
25 policy, why is No. 3 under "General Guidelines"

1 **there?**

2 A. There are multiple service providers.
3 Oftentimes data may be kept by -- primarily by one
4 or two providers, but there are multiple other
5 members of the IEP team, potentially.

6 Q. I'm not clear on that answer; so I'm not
7 clear on why No. 3 would be there just simply
8 because there's multiple providers. And let me
9 finish.

10 The reason I'm unclear is because you just
11 stated that IEP -- you're required to consider if
12 ESY is a requirement at least annually; is that
13 correct?

14 A. That is what I just stated.

15 Q. So I still don't understand, if you're
16 required to consider ESY, how there being multiple
17 team members pertains to No. 3, that "all members of
18 the IEP team can request ESY."

19 A. It may just be redundant in that it just
20 complies with the law.

21 Q. So to reiterate my previous question, it's
22 your understanding based on state and federal
23 regulations that you are required to consider ESY as
24 part of the development of an IEP?

25 A. Yes.

1 Q. Moving on to No. 4 under "General
2 Guidelines," typically the initial -- I'm going to
3 read the General Guideline -- all right? -- on
4 Exhibit 3.

5 And it states, "Typically the initial or
6 annual IEP is when the IEP team discusses the need
7 for ESY." And I'm going to stop there real quick
8 and just ask you another question.

9 You just told me that it's your
10 understanding that ESY must be considered at the
11 development or at an IEP meeting; is that correct?

12 MR. COHN-LEE: I think that
13 mischaracterizes the testimony but --

14 [PARENT]: Okay. Well, then, could you --

15 JUDGE HOUSE: I'm going to -- just a
16 moment. I agree. I'm going to sustain the
17 objection.

18 So can you reask your question?

19 [PARENT]: Yeah. I was going to request
20 that his answer to the previous question where he
21 stated that be reread so I can clarify the question.

22 JUDGE HOUSE: All right.

23 (The record was read by the reporter as
24 follows:

25 "Is it the District's policy that a member

1 of the IEP team must request ESY services?"

2 ANSWER: "Somebody has to initiate the
3 consideration of ESY.")

4 [PARENT]: And then what was my next
5 question, please?

6 (The record was read by the reporter as
7 follows:

8 "So No. 3 of the General Guidelines is
9 basically -- No. 3 on Exhibit 3 under your 'General
10 Guidelines' is where it states, 'All members of the
11 IEP team can request ESY,' that suggested that
12 someone on the team must initiate looking at ESY?
13 Is that what you just said?"

14 ANSWER: "We're required to consider ESY
15 under IDEA. So we do that at least annually for
16 every student under IEP.")

17 [PARENT]: Okay. Thank you.

18 THE REPORTER: You're welcome.

19 JUDGE HOUSE: [Parent], it's hard to do
20 this, but please try not to give a lengthy, what
21 would be your testimony or argument almost, in a
22 question.

23 I just heard that statement. It's very
24 long, and it's your interpretation, several
25 iterations. So it's a compound question; it's

1 unclear; and it's a little argumentative.

2 So just try to ask a shorter, single,
3 direct question.

4 [PARENT]: Very good. Feel free to call
5 me out.

6 JUDGE HOUSE: I just noticed it when I
7 heard that read back.

8 BY [PARENT]:

9 Q. Okay. I'm going to get back to General
10 Guidelines No. 4. "Typically the initial or annual
11 IEP is when the IEP team discusses the need for
12 ESY." And again, I'm on Exhibit 3 under "General
13 Guidelines." "However, if a student is new to the
14 district school" -- "district or school," I guess,
15 "data will be necessary to make these decisions. "In
16 these cases teams can indicate on the IEP that the
17 team will reconvene at a later date to determine if
18 ESY is appropriate and in which objective goals
19 areas," and then it's referenced, says "See the
20 guidance below."

21 I'm going to reference the one sentence,
22 "However, if the school is new to the district or
23 school, data will be necessary to make these
24 decisions."

25 Why is that sentence in the General

1 **Guidelines for extended school year, "data is**
2 **necessary to make these decisions"?**

3 A. We base our determination for ESY on the
4 identified needs of the students, and we rely on
5 data to inform that process.

6 Q. Is that all you rely on? You rely only on
7 data to determine if --

8 A. We rely on professional judgment and the
9 data.

10 Q. Okay. In Exhibit No. 4 of your document
11 under the OARs, Section (5) reads, "School districts
12 must develop criteria for determining the need for
13 extended school year services. Criteria must
14 include regression and recoupment time based on
15 documented evidence or, if no documented evidence,
16 on predictions according to the professional
17 judgment of the team."

18 So is it your understanding that the OARs
19 provide for there being no data?

20 A. My understanding would be ESY is typically
21 provided during the long break in the summer, and
22 whenever data is possible to support decisions, we
23 will ensure the opportunity to get that information.

24 Q. I'm going to repeat the question. (To
25 Judge House) Do I need to repeat the question, or

1 can I just say he didn't answer the question?

2 JUDGE HOUSE: I think that you can go
3 ahead and ask again. I didn't hear an answer.

4 [PARENT]: Okay.

5 JUDGE HOUSE: I didn't hear your answer to
6 the question directly.

7 THE WITNESS: Okay.

8 JUDGE HOUSE: Go ahead and ask the
9 question.

10 BY [PARENT]:

11 Q. I'm going to ask the question again then.

12 Would you agree that the OAR provides for
13 the instance that there may be no data?

14 A. It does provide for that opportunity.

15 Q. Okay. Then why are your General
16 Guidelines -- I'm going to retract that.

17 Since the OARs provide for an instance
18 where there is no data, do you believe that your
19 sentence, "If a student" -- your sentence in the
20 General Guidelines under Section 4, "If a student is
21 new to the district or school, data will be
22 necessary to make these decisions," is in line with
23 the Oregon Administrative Rules?

24 A. According to the OARs, the data is not
25 necessary. So this statement does use the word

1 "necessary."

2 **Q. Again, you didn't really answer my**
3 **question. Do you want me to repeat it?**

4 **A. Please.**

5 **[PARENT]:** Could you repeat my last
6 question, please. I'm sorry.

7 **THE REPORTER:** Sure thing.

8 **(The record was read by the reporter as**
9 **follows:**

10 **QUESTION:** "Okay. Then why are your
11 General Guidelines -- I'm going to retract that.
12 "Since the OARs provide for an instance where there
13 is no data, do you believe that your sentence, 'If a
14 student' -- your sentence in the General Guidelines
15 under Section 4, 'If a student is new to the
16 district or school, data will be necessary to make
17 these decisions,' is in line with the Oregon
18 Administrative Rules?")

19 **JUDGE HOUSE:** I think you can answer that
20 "yes" or "no."

21 **THE WITNESS:** So the statement that it's
22 necessary, then the answer to that would be no.

23 **BY [PARENT]:**

24 **Q. Thank you. (To Judge House) And I'd like**
25 **to apologize for having her have to reread my**

1 questions, but my short-term memory is really
2 kapooie.

3 JUDGE HOUSE: That's all right.

4 BY [PARENT]:

5 Q. Your No. 4, General Guidelines, then goes
6 on to say -- in Exhibit 3 under "General
7 Guidelines," Section 4, "In these cases teams can
8 indicate on the IEP that the team will reconvene at
9 a later date to determine if ESY is appropriate and
10 which objective" -- I'm going to stop there. I'm
11 going to stop after "reconvene at a later date prior
12 to the end of the school year to determine if ESY is
13 appropriate."

14 Do you believe that statement to be
15 supported by the OARs?

16 A. Yes --

17 Q. Yes or no.

18 A. Yes.

19 Q. Where do you find -- I'm sorry. May I ask
20 Your Honor something?

21 JUDGE HOUSE: Yes.

22 [PARENT]: I was going to ask where he
23 finds support for it, but did we agree that I'm not
24 going to do that?

25 JUDGE HOUSE: You can ask him if he has

1 knowledge of a specific provision, if he has it at
2 the ready, or you can just say "Yes, I believe it
3 is."

4 [PARENT]: Okay.

5 JUDGE HOUSE: Go ahead.

6 BY [PARENT]:

7 Q. Do you have specific knowledge of a
8 provision in the OARs that would support that
9 sentence?

10 A. I don't have specific OAR or federal
11 regulation numbers, but we must consider it at least
12 annually because of the required IEP process and all
13 of the factors and elements that need to be
14 addressed on an IEP. So yes.

15 Q. My question, to reask it, and I'm sorry to
16 do this -- the sentence reads, "In these cases teams
17 can indicate on the IEP that the team will reconvene
18 at a later date to determine if ESY is appropriate."

19 My question to you was: Do you believe that
20 sentence to be supported by the OARs? You stated
21 yes.

22 So I asked you -- the question was: Are you
23 familiar with where the support -- because the OARs
24 is pretty short -- where the support is for that
25 statement that you may reconvene at a later date to

1 determine if ESY is appropriate?

2 A. I don't believe it would be embedded in
3 this OARs unless it states specifically, and I'd
4 need to read through it again. But it's directly
5 tied to our requirements in the OARs regarding the
6 development of an IEP.

7 Q. I'm sorry. I didn't understand that.

8 It's directly tied to whose requirements?

9 A. Federal and Oregon.

10 Q. And what is directly required -- the
11 federal and Oregon requirements?

12 A. The development of an IEP and
13 consideration of ESY in that process.

14 Q. And how does that relate to reconvening at
15 a later date?

16 A. It must be done at least once annually.

17 Q. All right. I'm going to leave it at that.

18 JUDGE HOUSE: [Parent]?

19 MR. COHN-LEE: Actually, Judge, can we
20 take a five-minute break at this point?

21 JUDGE HOUSE: Yes. And we can -- I just
22 was trying to, you know, we're all sitting and not
23 moving for a long time. Let's go ahead and take 15
24 minutes.

25 What time did we anticipate lunch?

1 We can go off the record.

2 (A recess was taken from 10:57 a.m. to
3 11:17 a.m.)

4 JUDGE HOUSE: Go ahead, [Parent].

5 [PARENT]: Thank you.

6 Q. To get back to Section 4 of your General
7 Guidelines, which is under S-3, it finishes up, "The
8 team will reconvene at a later date to determine if
9 ESY is appropriate."

10 And you -- refresh my memory -- you had
11 stated that you felt that this portion of Section 4
12 was in alignment with state and federal regulations;
13 is that correct?

14 A. Yes.

15 Q. Under "Criteria For ESY Services," under
16 your extended school year document, which is S-3,
17 No. 1 states, "The student must demonstrate an undue
18 regression and recoupment of a skill or behavior
19 directly related to an IEP goal."

20 Do you contend that this is in alignment
21 with the OARs, the federal regulations --

22 A. Yes --

23 Q. -- and your guidance from the ODE?

24 A. Yes.

25 Q. In No. 5 under "Criteria For ESY Services"

1 on Exhibit S-3, it states, "If the team does not
2 have documented evidence, then the decision may be
3 made by predictions according to the professional
4 judgment of the team," and then you have
5 parenthesized, "(This is required by the OAR.)"

6 Earlier you stated that --

7 MR. COHN-LEE: I'm sorry, [Parent]. Was
8 that prior statement, was that a question --

9 [PARENT]: It wasn't a question. I was
10 just stating what it was stating.

11 MR. COHN-LEE: I see. Thank you.

12 JUDGE HOUSE: It might be a little bit
13 easier if you just refer to that section and then
14 ask the question in relation to it rather than read
15 it.

16 [PARENT]: Very good.

17 JUDGE HOUSE: It's in the record, this
18 piece.

19 Okay?

20 BY [PARENT]:

21 Q. So relating to Section 5 under "Criteria
22 For ESY Services," I believe earlier -- I'm going to
23 rephrase this.

24 Earlier did you state that data was
25 required to make an ESY determination?

1 A. Whenever possible.

2 Q. So data is not required to make a
3 determination for ESY?

4 MR. COHN-LEE: I think it misstates Mr.
5 Kolb's testimony.

6 JUDGE HOUSE: Actually his answer was
7 "whenever possible"; so there's some ambiguity.

8 Are you asking --

9 [PARENT]: I'm trying to clarify --

10 JUDGE HOUSE: I'm going to overrule the
11 objection. I think that is a fair question.

12 [PARENT]: I can rephrase it if you'd
13 like.

14 JUDGE HOUSE: Let me just ask it this way.
15 (To the witness) In consideration of what you said,
16 "wherever possible," does that leave room, or are
17 there some circumstances where data is not required?

18 THE WITNESS: Yes, I believe it does
19 indicate that data would not be required.

20 JUDGE HOUSE: And, [Parent], does that
21 answer the question?

22 [PARENT]: Yes.

23 JUDGE HOUSE: All right.

24 [PARENT]: And I have a follow-up
25 question.

1 JUDGE HOUSE: All right.

2 BY [PARENT]:

3 Q. So your extended school year criteria for
4 ESY, Exhibit 3, states that data is not required for
5 a determination of ESY?

6 MR. COHN-LEE: Again, I think -- in terms
7 of the criteria and what the policy states, I think
8 that mischaracterizes what the policy actually
9 states.

10 I think the testimony has been that when
11 data is possible to be gathered, it is required.
12 But only if it's not is it not required.

13 JUDGE HOUSE: Your objection is that he's
14 misstating the testimony?

15 MR. COHN-LEE: (No audible response.)

16 JUDGE HOUSE: I'm going to overrule that,
17 but I'm going to try and clarify the question.

18 Are you asking, [Parent], whether
19 specifically as stated in this policy is there any
20 place that says situations may occur where data is
21 not required? Is that what you're asking?

22 [PARENT]: Yes, does under the criteria.

23 MR. COHN-LEE: Withdraw my objection if
24 it's stated that way. But to suggest that simply
25 data is not required, I don't think that accurately

1 states what the policy says.

2 **JUDGE HOUSE:** If I restated that
3 correctly, if that's what you're trying to ask, I'll
4 ask the witness again. (To the witness) Looking at
5 the written policy, does the policy allow for a
6 situation where data is not required and a student
7 may be provided ESY?

8 **THE WITNESS:** Yes.

9 **JUDGE HOUSE:** All right. [Parent]?

10 **[PARENT]:** Thank you, Your Honor.

11 **Q.** Would you agree that the state's OARs are
12 reflective of the same question as previously -- you
13 previously answered? What I'm trying to get to I
14 guess is: Is it your understanding that the Oregon
15 regulations state the same thing --

16 **A.** Yes --

17 **Q.** -- that if data is not available, it is
18 not necessary to make a determination for ESY?

19 **A.** Yes.

20 **Q.** The same question for federal regulations.

21 **A.** Yes.

22 **Q.** So for federal, state, and your policy, if
23 data is not available, it's your understanding and
24 your policy that an ESY determination can still be
25 made in the absence of data?

1 A. Yes.

2 Q. Thank you. That was a long way to go for
3 that question.

4 JUDGE HOUSE: Now a followup. (To the
5 witness) Looking at this extended school year
6 policy, can you tell me where it provides for that
7 possibility?

8 THE WITNESS: On "Criteria For ESY
9 Services," No. 5, "If the team does not have
10 documented evidence, a decision may be made by
11 predictions according to the professional judgment
12 of the team as required by OAR."

13 JUDGE HOUSE: All right. Thank you.

14 BY [PARENT]:

15 Q. And I will follow up with that just to
16 concur with what you just stated, Mr. Kolb, that
17 when you said yes to the OARs, you were referencing
18 Section (5) of the OARs; is that correct?

19 A. Correct.

20 Q. All right. Thank you. So then getting
21 down under your extended school year "Specific
22 Guidelines," what's the purpose of specific
23 guidelines in your mind? How do you see specific
24 guidelines? Please explain.

25 A. Let me review these before I answer.

1 (Reading document.)

2 Can you state your question again?

3 Q. What are the purposes of the specific
4 guidelines in Exhibit S-3?

5 A. To further clarify direction for and
6 information for collecting data focused on skills or
7 behaviors, and then as well as ensuring the scope of
8 the laws included in the process for District staff.

9 Q. Under "Specific Guidelines," No. 2, it
10 seems to state that ESY -- well, actually it does
11 state "ESY must be based on measurable data."

12 Yet previously you told me that you
13 concurred that measurable data is not necessary to
14 make an ESY determination; is that correct?

15 A. State that again?

16 Q. Did you previously -- (To Judge House) I'm
17 sorry. What is it called when what he said?

18 JUDGE HOUSE: He testified.

19 BY [PARENT]:

20 Q. Did you previously testify -- sorry --
21 that ESY data is -- did you previously testify that
22 data is not required to make an ESY determination?

23 A. Yes.

24 Q. But now No. 2 states, "ESY must be based
25 on data"; is that correct?

1 A. That is what it reads.

2 Q. So in your opinion, is there conflict
3 there?

4 A. In my opinion that's part of the process
5 and guidelines that encompass the rest of this
6 document.

7 Q. Do you feel that there's conflicting -- is
8 it -- are you of the opinion that No. 5 under
9 "Criteria" conflicts with No. 2 under "Specific
10 Guidelines"?

11 A. In isolation they do.

12 Q. All right. Thank you.

13 JUDGE HOUSE: Since you're here, I'm just
14 going to ask a question.

15 How do you reconcile No. 2 with No. 5?

16 THE WITNESS: How do I reconcile No. 2
17 with No. 5?

18 JUDGE HOUSE: Yes.

19 THE WITNESS: In the absence of documented
20 evidence, I guess No. 5 reconciles No. 2 as based on
21 OARs and federal regs.

22 JUDGE HOUSE: I'm looking at "Specific
23 Guidelines," and No. 2 says, "ESY must be based on
24 measurable data such as DIBELS or" -- D-I-B-E-L-S,
25 which is an acronym -- "or behavior charts."

1 How does the word "must" reconcile with 5
2 if there is no data available?

3 **THE WITNESS:** I believe that there's no --
4 left out of that sentence, No. 2, "ESY data must be
5 based on measurable data," then provided examples of
6 such types of data.

7 Does that make sense?

8 **JUDGE HOUSE:** Yes, but I'm not sure. Let
9 me make sure I can understand your answer.

10 If there's data for the ESY, it must be
11 measurable data, and that is a definition but
12 somehow the word "data" is left out of that
13 statement?

14 **THE WITNESS:** Correct.

15 **JUDGE HOUSE:** How would the person reading
16 this statement and attempting to follow the
17 guideline know that that's left out?

18 **THE WITNESS:** This guideline is -- is for
19 staff, for staff guidance. And training on in the
20 process of staff and considering ESY as part of the
21 IEP process would afford that opportunity.

22 **JUDGE HOUSE:** All right. Go ahead,
23 [Parent].

24 **BY [PARENT]:**

25 **Q. So if this is a document for guidance for**

1 staff, was this the document that was guiding the
2 staff that was in the IEP team meeting on November
3 20th and March 18th?

4 A. Yes.

5 Q. And you said that this is just a guidance
6 document? You stated this is just a guidance
7 document and that it is provided in addition to
8 training relating to ESY -- ESY --

9 JUDGE HOUSE: Would that be training and
10 provided to staff members on ESY?

11 THE WITNESS: Yes.

12 JUDGE HOUSE: As well --

13 [PARENT]: Eligibility? That's the word I
14 was looking for.

15 THE WITNESS: Yes.

16 BY [PARENT]:

17 Q. How often is ESY training for eligibility
18 provided to staff?

19 A. Annually, based on the special ed handbook
20 that we provide to our special ed staff prior to
21 school starting.

22 Q. So you testified earlier that you amended
23 this in August --

24 A. Correct --

25 Q. -- of 2013? Is it your suggestion that

1 the staff that was in the IEP meetings of November
2 and March for [Student] received training prior to
3 the beginning of the school year on ESY --

4 A. It's not my suggestion --

5 JUDGE HOUSE: Let [Parent] finish the
6 question, please.

7 THE WITNESS: I'm sorry.

8 JUDGE HOUSE: Go ahead.

9 BY [PARENT]:

10 Q. That they received training on ESY
11 eligibility prior to both those meetings?

12 A. Yes, would be my statement that they did
13 receive the training.

14 Q. Everybody that was in the IEP meeting?

15 A. No. The exception would be Doug Ely, and
16 I'm trying to recall who else may have.

17 And then Dr. Pam Schwerdt, our school
18 psychologist, was in attendance at those meetings,
19 but she was out with I believe a surgery during the
20 training.

21 Q. How about ESD employees? Were they
22 involved in the training?

23 A. I don't recall if ESD employees were at
24 that training.

25 Q. If not, let's make the assumption that --

1 because there were two ESD employees at the IEP
2 meetings; is that correct?

3 A. Kirby Erickson.

4 Q. Kirby Erickson and -- is Cindy Picton in
5 the --

6 A. No, she works for us.

7 JUDGE HOUSE: And just in the event that
8 those names aren't spelled somewhere else, is it K-
9 i-r-b-y, Erickson, E-r-i-c-k-s-e-n?

10 THE WITNESS: O-n.

11 JUDGE HOUSE: O-n? And I think they're on
12 the list.

13 [PARENT]: They're on the list.

14 JUDGE HOUSE: I know, but I don't have
15 that list to recall. What was the second name?

16 THE WITNESS: Cindy, C-i-n-d-y, Picton, P-
17 i-c-t-o-n.

18 JUDGE HOUSE: Thank you. All right.
19 Those are ESD employees that were at the meeting and
20 may not have been in the training?

21 THE WITNESS: Kirby Erickson was the only
22 one that's a DSD employee. Cindy Picton was a
23 Grants Pass School District employee who was in
24 attendance at that training.

25 JUDGE HOUSE: Okay.

1 BY [PARENT]:

2 Q. So Kirby Erickson was part of the
3 training, or no?

4 A. I don't recall.

5 Q. Cindy Picton --

6 A. Yes, she was.

7 Q. And Dorothy Jewell?

8 A. Yes.

9 Q. When did the training occur?

10 A. The Thursday before school started.

11 Q. Do you recall how much time was spent on
12 ESY eligibility --

13 A. I do not --

14 Q. -- as part of the training?

15 A. I do not recall the agenda or the -- I
16 recall ESY being on the agenda. I do not recall how
17 much time was spent on that training.

18 Q. Do you recall whether or not the "General
19 Guidelines Criteria," "Specific Guidelines," and
20 "When Parents Disagree" was covered in the training?

21 A. Yes, this document was covered in the
22 training.

23 Q. So everything that we've covered thus far
24 was reinforced in training? All the questions I've
25 asked you about this document was covered in the

1 training and reiterated to the people that were in
2 the IEP meetings on November and March that this is
3 the policy of the school district?

4 A. Yes, this was covered in its entirety at
5 the meeting.

6 Q. And the people in the meeting were told
7 that "this is the policy and these are the
8 guidelines that you must follow for ESY
9 eligibility"?

10 A. I did not read this out loud to them.
11 They all read this for themselves, and then we
12 proceed with dialogue and questioning and practices
13 around this.

14 JUDGE HOUSE: I'm going to ask this
15 question to have it a little bit more clearly
16 answered.

17 Were they told that this is the policy
18 whether they read it or not?

19 THE WITNESS: Yes.

20 JUDGE HOUSE: Were they told to follow
21 this policy?

22 THE WITNESS: Yes.

23 JUDGE HOUSE: Was that your question,
24 [Parent]?

25 [PARENT]: Yes. Thank you.

1 JUDGE HOUSE: All right. Go ahead,
2 [Parent].

3 BY [PARENT]:

4 Q. No. 3 under the "Specific Guidelines" gets
5 back to some of the questions we had before, and
6 ends, "ESY" -- "Only those needs that relate
7 directly to one or more IEP goals." So it's stated
8 in here.

9 Is it reflected in the training or
10 reinforced in the training that ESY services can
11 only relate to IEP goals?

12 A. The term "objectives" may have been left
13 out there, "goals and objectives."

14 Q. So it is --

15 A. So yes.

16 Q. So it is reinforced that ESY eligibility
17 can only be based on one or more IEP goals and/or
18 objectives --

19 A. Yes --

20 Q. -- and we'll say "objectives" was left
21 out?

22 A. Yes.

23 Q. Okay. No. 5, under "Specific Guidelines"?

24 MR. COHN-LEE: And, [Parent], are you
25 looking at page 2?

1 **[PARENT]:** Page 2 of Exhibit 3. Actually
2 -- I'm sorry. I'll ask that as a follow-up.

3 So, again, I'm on No. 5 on page 2 of 2 for
4 Exhibit 3.

5 **JUDGE HOUSE:** Beginning "ESY needs to be
6 planned and documented"?

7 **[PARENT]:** Yes, Your Honor.

8 **JUDGE HOUSE:** All right.

9 **[PARENT]:** I'm trying to avoid reading
10 them.

11 **JUDGE HOUSE:** That's all right.

12 **[PARENT]:** And now I'm getting lost.

13 **JUDGE HOUSE:** That's all right. Go ahead
14 and ask the question.

15 **BY [PARENT]:**

16 **Q.** Leaving the last sentence out, or just I
17 guess the last sentence out -- I have to read it,
18 I'm sorry, to have my question make sense.

19 **JUDGE HOUSE:** All right.

20 **BY [PARENT]:**

21 **Q.** But it says that the ESY plan, if there is
22 going to be one I would presume, needs to only
23 address the narrow issues of the skill that is
24 poorly recouped.

25 Is it your contention that that statement

1 aligns with Oregon Administrative Rules pertaining
2 to ESY?

3 A. Yes.

4 Q. Is it your contention that that statement
5 -- that that statement aligns with federal
6 regulations pertaining to ESY?

7 A. Yes.

8 Q. No. 6 on page 2 of 2, under Exhibit 3,
9 what does that mean?

10 A. "Related service areas on the IEP" --
11 maybe consultation, maybe services outside of -- can
12 be transportation, although I don't know how that
13 might fit.

14 Q. Let me redirect the question.

15 I'm not asking what is related service. I'm
16 asking: What does the sentence mean as far as the
17 specific guidelines go?

18 And it reads, "ESY may involve only
19 related services." So I guess what I'm looking for
20 is not what a related service is, but what are you
21 trying to say with that sentence because it's under
22 a "Specific Guidelines"?

23 A. The provision of ESY may only be as
24 determined a related service need.

25 Q. So I'm going to ask a follow-up question.

1 **Are you done?**

2 A. Yeah.

3 **Q. Okay. So are you saying that ESY services**
4 **may only be related services?**

5 A. If deemed appropriate.

6 **Q. Are you saying ESY services can only be**
7 **related services if deemed appropriate?**

8 A. ESY services -- ESY services can be more
9 than just related services. But it is possible that
10 only related services may be deemed appropriate;
11 hence, yes.

12 **Q. Do you think that No. 6 may be a little**
13 **ambiguous, reflecting on it now, that it may be**
14 **interpreted in multiple ways?**

15 **MR. COHN-LEE:** I'm going to object as to
16 speculation.

17 **JUDGE HOUSE:** I'm going to sustain that
18 objection.

19 You can argue that point if you want to.
20 You can ask this witness if he finds that statement
21 clear or does he see ambiguity in that statement.
22 He can answer either one of those questions.

23 **BY [PARENT]:**

24 **Q. Do you find this statement clear?**

25 A. Yes.

1 Q. Do you find this statement clear in that
2 it is suggesting that it may involve only related
3 services as opposed to it can only involve related
4 services?

5 A. It may involve only related services.

6 Q. You missed the nuance in the question. My
7 concern is that it was interpreted by your staff to
8 suggest that it can only involve related services
9 because I believe --

10 JUDGE HOUSE: Let's me ask the question
11 this way.

12 [PARENT]: Am I -- thank you.

13 JUDGE HOUSE: Just a moment. (To the
14 witness) Mr. Kolb, is it possible to interpret that
15 statement as an ESY is -- now I'm getting confused -
16 - is required to only provide related services?

17 (To [Parent]) Is that what you wanted?
18 You're trying to get to the opposite or the
19 exclusive?

20 [PARENT]: Correct.

21 JUDGE HOUSE: So you're asking if it could
22 be interpreted to say that ESY is provided only for
23 related services?

24 [PARENT]: Correct.

25 THE WITNESS: No.

1 JUDGE HOUSE: All right.

2 BY [PARENT]:

3 Q. Did anybody ever bring up any questions in
4 training relating to this question that you can
5 recall?

6 A. Not that I can recall.

7 Q. Or not question. Relating to this
8 guideline?

9 A. Not that I recall.

10 Q. And to reiterate, you're of the opinion
11 that No. 6 does not make ESY exclusive to related
12 services?

13 MR. COHN-LEE: Well, I am going to object
14 at that point, Judge. I think we have on multiple
15 occasions been straying into asked and answered.

16 JUDGE HOUSE: [Parent], I agree on this.
17 It's asked and answered.

18 [PARENT]: Okay. Very good.

19 I don't think I have any more questions
20 pertaining to Exhibit S-3. Bear with me for a
21 moment.

22 I'm going to present Exhibit 15. I'm
23 sorry. Before I do that, can I get those back in the
24 event that I need to provide them to another
25 witness?

1 JUDGE HOUSE: Yes. Would you hand the
2 exhibits back to [Parent]?

3 THE WITNESS: Yes. I need one more
4 paperclip. I got it.

5 JUDGE HOUSE: So you need a copy of S-15?

6 [PARENT]: S-15, yeah, for him.

7 Q. S-15 is IEP meeting notes from the
8 11/20/2013 IEP meeting?

9 JUDGE HOUSE: Is that correct?

10 THE WITNESS: That is correct.

11 MR. COHN-LEE: And, Judge, at this point I
12 would raise, not so much an objection, but a note
13 that I think this document is incomplete.

14 I think [Parent] has pulled out one page
15 out of the actual meeting minutes that were taken
16 for that meeting. And other than -- I think [Parent]
17 has inserted highlighting into the document, which
18 is not obviously part of the original document.

19 But the complete document is actually at
20 District's Exhibit D-4, and that includes a complete
21 collection of the IEP meeting notes.

22 I think it would be appropriate under the
23 Rule of Completeness to reference that document as
24 opposed to just a single page in isolation.

25 JUDGE HOUSE: Mr. Cohn-Lee, the Rule of

1 Completeness? You mean the Best Evidence Rule?

2 **MR. COHN-LEE:** Also completeness. There's
3 also a Rule of Completeness which states that you
4 can't just selectively pull out individual pages or
5 statements from a document, that the document should
6 probably be reviewed in its entirety.

7 **JUDGE HOUSE:** I was just going to ask you
8 what the rule number was.

9 **MR. COHN-LEE:** Sure.

10 **JUDGE HOUSE:** But, you know, we don't have
11 -- administrative law doesn't have -- the Rules of
12 Evidence can be used as guides, et cetera. And I
13 understand what you're trying to say.

14 I think for purposes of [Parent's]
15 presentation or discussion, we'll stick with S-15 as
16 his reference. But when you question S-15, we'll
17 use the District's document.

18 And, [Parent], on the record, I'm just
19 going to have you remember that the witness has to
20 answer the question for it to be evidence.

21 So the way that you introduce this, you
22 said what it was. You can't testify right now
23 because you're not sworn in. So you need to just
24 ask, "Is this meeting minutes?" And his answer
25 would have been whatever it was.

1 [PARENT]: Okay.

2 JUDGE HOUSE: So I'm just going to do that
3 preliminarily. This appears to be IEP meeting notes
4 for Student on 11/20/2013, page 27 and 28; is that
5 correct?

6 THE WITNESS: That is correct.

7 JUDGE HOUSE: Does that indicate that
8 there are additional pages and this is not a
9 complete document?

10 THE WITNESS: Yes, there are additional
11 pages.

12 JUDGE HOUSE: Are there shaded areas on
13 this document that are not the same as the
14 document's original?

15 THE WITNESS: I cannot answer that
16 question without reviewing the original.

17 JUDGE HOUSE: So you don't have -- let me
18 ask.

19 THE WITNESS: Mine's not shaded.

20 JUDGE HOUSE: Okay. I'm going to show you
21 what's been given to the Court on page 27 and 28.

22 Does that reflect the original?

23 THE WITNESS: Without discrepant review,
24 it appears to be in its original form.

25 JUDGE HOUSE: Okay. If there are

1 discrepancies, we'll bring them out on cross-
2 examination.

3 **THE WITNESS:** Okay.

4 **JUDGE HOUSE:** Okay. [Parent], not to
5 over-complicate, we're looking at S-15.

6 **[PARENT]:** Sorry. I'm just comparing the
7 District's exhibit to mine.

8 **JUDGE HOUSE:** Oh. You have S-15, 1 of 1,
9 printed at the bottom of 27 and 28 --

10 **[PARENT]:** 28, yeah. And District's
11 Exhibit D-4. MR. COHN-LEE: D-4.

12 **[PARENT]:** It appears to be their page 23.

13 **JUDGE HOUSE:** All right. So we don't know
14 whether this is a complete first part of that
15 document; so that's noted. This appears to be a
16 portion of the document purporting to be minute
17 notes, and it's 27 and 28.

18 Go ahead and ask your questions about this
19 document.

20 **[PARENT]:** If I may, I only did the one
21 page that I needed because I knew that I was faxing
22 in my exhibit lists. If it pleases Your Honor, we
23 can reference the respondent's exhibit. It doesn't
24 matter to me.

25 **JUDGE HOUSE:** If you're not stating that

1 they're different documents, if you'll agree that
2 what you're looking at is the same document that you
3 intended to offer -- and I just heard you say that
4 the page numbers are different.

5 Those page numbers were preprinted on
6 these meeting notes. So is the one that you're
7 going to look at preprinted page 27 of 28?

8 [PARENT]: No. It's preprinted page 23 of
9 24, and I think it has to do with how it was
10 delivered because it was delivered in an Excel
11 spreadsheet; so depending upon or something.

12 JUDGE HOUSE: Okay. So if you look at the
13 content and you agree that that District's Exhibit D
14 -- D-4?

15 MR. COHN-LEE: Correct.

16 JUDGE HOUSE: -- is the document that you
17 intended to refer to, we will use D-4.

18 [PARENT]: I would agree to that.

19 MR. COHN-LEE: Yeah, and in fact, Judge, I
20 think we probably should because, looking at the
21 pages and depending on how you printed them out,
22 even the content of the page is different --

23 [PARENT]: Right --

24 MR. COHN-LEE: -- from page to page.

25 [PARENT]: I have no problem with that.

1 **JUDGE HOUSE:** That's all right. So what
2 we're going to do for the record is S-4 won't be
3 admitted. **MR. COHN-LEE:** S-15?

4 **JUDGE HOUSE:** I'm sorry. S-15. We are
5 referring instead to District's D-4, which I assume
6 now is offered and accepted as the minutes taken or
7 provided for the meeting on 11/20/2013; is that
8 correct?

9 **MR. COHN-LEE:** (No audible response.)

10 **JUDGE HOUSE:** Okay.

11 (Whereupon, District's Exhibit D-4 was
12 admitted into evidence.)

13 **BY [PARENT]:**

14 **Q. Do you have a copy of it?**

15 **A. I do.**

16 **Q. Who created these minutes?**

17 **A. Emily Luka, my administrative assistant,**
18 took these minutes at this meeting.

19 **JUDGE HOUSE:** Emily?

20 **THE WITNESS:** Luka, L-u-k-a.

21 **JUDGE HOUSE:** Thank you.

22 **MR. COHN-LEE:** And, Judge House, just for
23 clarity, Ms. Luka is actually sitting in the room
24 here.

25 **JUDGE HOUSE:** I'm sorry, Ms. Luka. And I

1 should have known that, but the court reporter had
2 already asked your names. I apologize.

3 **MS. LUKA:** No problem.

4 **JUDGE HOUSE:** Okay. Go ahead.

5 **BY [PARENT]:**

6 **Q.** Would you agree that Ms. Luka did a good
7 job taking minutes?

8 **A.** Yes.

9 **Q.** Would you agree that if somebody spoke,
10 she made a note of it?

11 **A.** As much as possible, she would have made a
12 note of it.

13 **Q.** So these minutes would be reflective of
14 pretty much everything that occurred in the meeting?

15 **A.** I don't believe necessarily everything.
16 They summarize an attempt to indicate who referenced
17 what or said what.

18 **Q.** Would you agree that if -- if we agreed
19 that it's a summary, do you agree that if somebody
20 spoke, it's referenced in this -- in these meeting
21 notes?

22 **MR. COHN-LEE:** I'm going to object. I
23 think that has been asked and answered.

24 **JUDGE HOUSE:** Not directly. I'm going to
25 overrule the objection.

1 THE WITNESS: Yes.

2 BY [PARENT]:

3 Q. Okay. Referring to page 23 and 24 in the
4 District's Exhibit D-4, in the left-hand column, it
5 says, "Extended School Year."

6 Are you with me on that, Mr. Kolb?

7 A. I'm there.

8 Q. In the right-hand column, it states,
9 "Extended school year determination to be reviewed
10 on April 16th. Parent is not in consensus."

11 You're in agreement with that?

12 A. Yes.

13 Q. In the "Discussion" and the "Action,"
14 which is the middle column, "JA stated to team" is
15 the first comment. "JA" is -- do you have any idea
16 who that refers to?

17 A. Julie Armbrust. She was the Oregon
18 Department of Education assigned facilitator for the
19 IEP meeting.

20 Q. Okay.

21 JUDGE HOUSE: Let me ask for
22 clarification, because I've seen this word used in
23 two different places again. There's a technical
24 word for "mediator" as a term of art, and there's a
25 "facilitator."

1 Was Ms. Armbrust a mediator or a
2 facilitator?

3 **THE WITNESS:** My apologies. She was a
4 facilitator.

5 **JUDGE HOUSE:** You said "facilitator."
6 It's not you that used the word differently. Okay.
7 And it wasn't you. It's just shown up somewhere.

8 Okay. So your question started to ask
9 about she says she's the first person mentioned.

10 **BY [PARENT]:**

11 **Q. JA is mentioned as having a conversation**
12 **and -- I'm sorry. Let me back up. Prior to this**
13 **section is "Placement" -- and I'm moving up the line**
14 **-- "Placement," "Service Summary," "Service**
15 **Summary," "Service Summary," and below it is**
16 **"Special Factors," "Final Concerns," "Parent Input**
17 **For PLEPS."**

18 **So are you in agreement that this section**
19 **is the only section relating to extended school**
20 **year?**

21 **A.** Without going through the entire document
22 at this time, I would have to say this is my only
23 current knowledge area without reviewing the entire
24 document to see if ESY was discussed anywhere else.

25 **Q. To the best of your recollection, do you**

1 recall that we only discussed ESY at one point
2 during that meeting?

3 A. To the best of my recollection --

4 Q. Thank you --

5 A. -- yes.

6 Q. So it appears by looking at initials,
7 which -- it appears by looking at the initials under
8 "Discussion Action Area," that JA's initials are
9 there, RP's initials are there.

10 Would you agree that "RP" is referring to
11 me?

12 A. Yes, I would.

13 Q. And KK's initials are there.

14 Would you agree that "KK" refers to you?

15 A. Yes.

16 Q. So the entire discussion pertaining to ESY
17 in the November 20th IEP meeting was by the --
18 included the facilitator -- we decided on
19 "facilitator"; right?

20 A. Yes.

21 Q. Myself and yourself, or you?

22 A. I cannot say for sure, but this portion of
23 the document indicates that only the three of us
24 were involved in that discussion.

25 Q. And to reiterate, I'm only asking based on

1 **what's here.**

2 A. Based on what's here, yes.

3 **Q. It would appear that --**

4 A. Yes.

5 **Q. Okay. Thank you.**

6 Do you recall how many people were on that
7 IEP team for that meeting? Actually I retract that.
8 I'm going to bring up another exhibit because I have
9 that exhibit I think.

10 **JUDGE HOUSE:** Are you wanting to show how
11 many people were at the meeting?

12 **[PARENT]:** I thought I had the exhibit
13 that had exactly who was at that meeting but --

14 **JUDGE HOUSE:** Would it be at the end of
15 the document?

16 **THE WITNESS:** It's at the very beginning
17 of the document.

18 **JUDGE HOUSE:** Sorry. I'm asking a
19 question here.

20 Would it be located somewhere in the
21 document, the beginning or the end?

22 **[PARENT]:** Yes, it's at the beginning,
23 Your Honor.

24 **JUDGE HOUSE:** Thank you. So it is D-4,
25 page 1.

1 [PARENT]: Page 1.

2 Q. So looking at D-4, page 1, "Attendees,"
3 does that seem correct?

4 A. Yes.

5 Q. So there was nine people that had worked
6 with [Student] and were involved in his education in
7 that meeting; is that correct?

8 A. No.

9 Q. How many people were in that meeting that
10 were --

11 JUDGE HOUSE: You asked a compound
12 question, and I'll separate them.

13 You asked a "number of people," and then
14 you included a statement "that had worked with" or
15 "provided services" -- you asked about how they were
16 related to [Student]. (To the witness) So were there
17 nine people at the meeting?

18 THE WITNESS: Yes.

19 JUDGE HOUSE: [Parent], are you asking if
20 everyone at that meeting taught [Student] or
21 provided services to [Student]?

22 [PARENT]: I can ask a different question.

23 JUDGE HOUSE: Okay.

24 BY [PARENT]:

25 Q. Of those nine people -- of those nine

1 people, how many had direct contact with [Student]?

2 A. Eight.

3 Q. And referring to "direct contact," I'm
4 referring to responsible for some provision of
5 [Student's] education.

6 A. It's a broad scope. One, two, three,
7 four, five, six, seven -- eight.

8 JUDGE HOUSE: So the answer is eight.

9 BY [PARENT]:

10 Q. So eight? So if the IEP team consisted of
11 eight people that were involved in [Student's]
12 education -- let me rephrase this.

13 The IEP team per your testimony consisted
14 of eight people that were involved in [Student's]
15 education, yet -- I'm going to -- strike that.

16 Were you one of those eight people in the
17 answer to the last question?

18 A. Yes.

19 Q. And I may have asked this previously, but
20 did you ever provide instruction to [Student]?

21 A. I frequently interacted with [Student]
22 during the provision of ESY last summer, including
23 spelling, staff support, lunch breaks, and direct
24 one-to-one interaction with [Student], as well as
25 observing on numerous occasions.

1 Q. On page 1 it has you listed as "Director
2 of Special Services"?

3 A. That is correct.

4 Q. Please explain your role in that IEP
5 meeting.

6 A. My role in that IEP meeting, contribute
7 based on my knowledge of the student. Additionally,
8 when a disagreement should occur, I would serve as
9 the District representative.

10 Q. Is the purpose of the District
11 representative to -- strike that.

12 What's the purpose of the District
13 representative in an IEP meeting?

14 A. The purpose of the District representative
15 in an IEP meeting is pretty vast. It has to do with
16 knowledge and allocation of resources. Can be
17 knowledge of placement options, outside agencies.

18 Additionally, when disputes may arise, the
19 District representative would need to make a
20 determination.

21 JUDGE HOUSE: Are you also the individual
22 who has the authority to authorize expenditures from
23 the District on behalf of services?

24 THE WITNESS: Yes.

25 JUDGE HOUSE: [Parent]?

1 BY [PARENT]:

2 Q. You said that you felt that the District
3 representative's role was to mediate dispute?

4 "Mediate" was a word that I put in there. That
5 wasn't your word.

6 But resolve disputes? I forget the exact
7 word you used.

8 A. I believe that's part of my charge in my
9 role for the District, and at times mediation or
10 ultimately making a determination when two parties
11 can't agree to agree.

12 Q. Do you believe that's your role -- no, I'm
13 not going to say "your role," but the position that
14 you were in, or your role -- in that meeting did you
15 believe that that was your role based on the Oregon
16 Administrative Rules pertaining to IEP?

17 A. Certain moments in that meeting, yes.

18 Q. Do you deem that that was your role based
19 on federal regulations? And when I say "your role,"
20 I'm particularly just referencing --

21 A. That part of my role --

22 Q. That part of your role that you discussed,
23 when a -- a -- when a disagreement occurs.

24 MR. COHN-LEE: And I'm sorry. I just have
25 to object as vague. Which part of which role are

1 you referencing?

2 **JUDGE HOUSE:** Are you asking whether his
3 role as I believe he stated was to try to resolve
4 disputes if there was disagreement, if they cannot
5 be resolved then to make a decision?

6 **[PARENT]:** That's the role I'm
7 referencing. And

8 I'm trying to get out: Does he believe that --

9 **JUDGE HOUSE:** That the federal and state
10 rules provide for him to act in that role?

11 **[PARENT]:** Yes.

12 **THE WITNESS:** Yes.

13 **BY [PARENT]:**

14 **Q.** Thank you. On page 23 of 24 in D-4,
15 **discounting the facilitator, just your initials and**
16 **my initials are on this entire section for "Extended**
17 **School Year Conversations"; is that correct?**

18 **JUDGE HOUSE:** I think you're speaking a
19 little fast for the court reporter.

20 **[PARENT]:** I'm sorry.

21 **JUDGE HOUSE:** And can I ask it a little
22 bit differently and see if I'm asking the same
23 thing?

24 **[PARENT]:** Yes.

25 **JUDGE HOUSE:** In the "Discussion" section

1 of "Extended School Year" on page 23, is there an
2 indication that anyone other than yourself and
3 [Parent] of the IEP team discussed ESY?

4 **THE WITNESS:** No.

5 **JUDGE HOUSE:** And let me ask an additional
6 question: Was the facilitator's role to discuss ESY
7 as a factual matter? Let me back up. I want to ask
8 you a question.

9 What role did the facilitator play?

10 **THE WITNESS:** IEP development to include
11 where on the IEP we addressed this ESY.

12 **JUDGE HOUSE:** Does the facilitator add
13 content to the discussion, or does the facilitator
14 enable conversation between the parties?

15 **THE WITNESS:** The facilitator does add
16 content to the discussion, did in this case for
17 sure.

18 **JUDGE HOUSE:** All right. So the
19 facilitator -- I'm sorry, [Parent]. I apologize.
20 I'm --

21 **[PARENT]:** I'm coming up with a number.

22 **JUDGE HOUSE:** But in this instance, did
23 the facilitator actually discuss substantive issues
24 of the IEP, discuss the provision of services or
25 provided input on the provision of services to the

1 Student?

2 **THE WITNESS:** No.

3 **JUDGE HOUSE:** So she provided structure --
4 did she provide structure for the discussion?

5 **THE WITNESS:** Yes.

6 **JUDGE HOUSE:** Okay. I'm not going to ask
7 any more questions right now. [Parent], go ahead.

8 **BY [PARENT]:**

9 **Q.** I'm going to bring up the facilitator.

10 **The facilitator was not there -- was the**
11 **facilitator there because she knew anything about**
12 **[Student]?**

13 **A.** No.

14 **Q.** Was the facilitator there because she was
15 **familiar with [Student's] educational history?**

16 **A.** No.

17 **Q.** In your mind why was the facilitator -- in
18 **your opinion, why was the facilitator there?**

19 **A.** In my opinion, the facilitator was there
20 as it was an idea I approached you with, to have an
21 ODE-appointed facilitator given some challenges that
22 our team has worked through prior to this November
23 meeting.

24 **Q.** The facilitator was not there -- was the
25 **facilitator there to provide opinions relating to --**

1 **strike that.**

2 **I have no further questions with this.**

3 **And I'm sorry. You had re-asked my**
4 **question very eloquently about -- and I don't know**
5 **if we ever got that answer.**

6 **JUDGE HOUSE:** Asked about was his role in
7 that meeting with the OARs in compliance?

8 **[PARENT]:** No, it was --

9 **JUDGE HOUSE:** Or was it about the
10 facilitator?

11 **[PARENT]:** It was involved in that. You
12 had asked more eloquently or more directly is it
13 Your Honor's -- was it just he and I.

14 **JUDGE HOUSE:** Okay. Just based on page
15 23, who was involved in the discussion of the ESY?

16 **[PARENT]:** That was it, and I don't know
17 the answer was ever given.

18 **THE WITNESS:** Based on this, it was only
19 [Parent] and myself.

20 **JUDGE HOUSE:** All right.

21 **BY [PARENT]:**

22 **Q. Is it your understanding, Mr. Kolb, that**
23 **IEP decisions must be made by a team?**

24 **A. Yes.**

25 **Q. Is it your understanding that the team,**

1 the entire IEP team should have input on IEP
2 decisions?

3 A. Yes.

4 Q. By looking at this on page 23, this
5 section, does it appear that the team was involved
6 in the decision relating to ESY in the November 20th
7 meeting, IEP meeting?

8 A. Having been there, yes.

9 JUDGE HOUSE: I think the question is just
10 on the face of the document.

11 THE WITNESS: On the face of this, no.

12 JUDGE HOUSE: And I'm going to go ahead
13 and just ask you to explain your answer.

14 THE WITNESS: They're based on District
15 procedures, prior discussion as to how to address
16 this on the ensuing IEP.

17 Although not rich in dialogue at the
18 meeting, I recall one team member -- and I do not
19 know exactly who it was -- reiterated there was a
20 need to collect data to make these decisions.

21 And it was not me unless I reiterated it
22 in there again, but -- so I don't know if that
23 helps.

24 JUDGE HOUSE: So your recollection is
25 someone at some point said that it was needed, but

1 it's not reflected in the note?

2 **THE WITNESS:** Correct. That would be my
3 recollection.

4 **JUDGE HOUSE:** All right. [Parent]?

5 **BY [PARENT]:**

6 **Q.** So these notes are not reliable?

7 **A.** These notes are reliable.

8 **Q.** But somebody said something pertaining to
9 -- it's your recollection that somebody said
10 something pertaining to extended school year other
11 than yourself or myself, and it's not reflected in
12 these notes?

13 **A.** Yes.

14 **Q.** Do you recall -- did the Parent ask to
15 discuss ESY at this meeting?

16 **A.** Did the Parent ask --

17 **[PARENT]:** Can I just refer to myself?

18 **JUDGE HOUSE:** Yes.

19 **[PARENT]:** I don't want to -- I don't want
20 to appear to be testifying.

21 **JUDGE HOUSE:** No, that's all right.

22 **BY [PARENT]:**

23 **Q.** Do you recall me asking you to discuss ESY
24 at this meeting?

25 **A.** Yes.

1 Q. Do you recall your response?

2 A. Yes.

3 Q. Could you repeat what you recall as your
4 response?

5 A. My response was as per our District
6 guidelines on consideration of ESY with students who
7 were new to our District for which we don't have
8 sufficient data to help inform that decision, that
9 it would be typical of our practices that we would
10 defer this to a later date until --

11 JUDGE HOUSE: Just slow down just a little
12 bit.

13 THE WITNESS: I'm sorry.

14 JUDGE HOUSE: I'm sorry. There's a lot of
15 nuances to what you're saying. So can you start
16 "Pursuant to our District guidelines with students
17 who are new to our District" and go from there.

18 THE WITNESS: It's our practices to try to
19 collect data to inform ESY decisions.

20 JUDGE HOUSE: All right. [Parent], did
21 you hear that?

22 [PARENT]: Yes.

23 JUDGE HOUSE: All right. Go ahead.

24 BY [PARENT]:

25 Q. So was there a discussion relating ESY

1 **other than that?**

2 A. I believe Julie Armbrust attempted to
3 clarify with you common practices in the State of
4 Oregon as related to deferring the determination of
5 making the ESY determination --

6 **THE REPORTER:** Could you just -- I'm
7 sorry. I didn't hear that at the beginning. Do you
8 mind --

9 **THE WITNESS:** Okay. So I believe Julie
10 Armbrust referenced common Oregon practices in which
11 Districts may at a later date make the determination
12 for ESY.

13 **JUDGE HOUSE:** All right.

14 **BY [PARENT]:**

15 **Q. So a decision was made to not discuss ESY**
16 **at the November IEP meeting?**

17 A. No.

18 **Q. So ESY was discussed at the --**

19 A. Yes.

20 **Q. Can you please to the best of your**
21 **recollection relate what the discussion was about?**

22 A. We very briefly touched on [Student] had
23 ESY when [Student] came to us; now that we're
24 drafting a new IEP, new objectives, that we would be
25 looking to defer the determination of ESY. So --

1 Q. And why would we be deferring the
2 determination of ESY?

3 A. Based upon District practices.

4 Q. So District practice is not based upon
5 federal, state regulations, or your own -- or the
6 District's own General Guidelines, criteria or
7 specific guidelines?

8 MR. COHN-LEE: Well, I'm going to object
9 at this point. I think we are straying a bit into
10 testifying as opposed to asking a question.

11 JUDGE HOUSE: I think that there was a
12 question in there, but I think --

13 [PARENT]: I just went too far?

14 JUDGE HOUSE: No. I think that the
15 question that you're asking or that is relevant to
16 this IEP -- (to the witness) did you make that
17 decision based on [Student's] needs in this IEP to
18 defer that determination?

19 THE WITNESS: Yes.

20 JUDGE HOUSE: You just said it was based
21 on District practices. Why in [Student's] case?

22 THE WITNESS: To determine [Student's]
23 needs as related to ESY.

24 JUDGE HOUSE: Why did it need to be
25 deferred? Not just "we needed data." Was there no

1 data?

2 **THE WITNESS:** We had a brand new IEP we
3 were implementing. ESY would need to be determined
4 based on current IEP. So if we're just implementing
5 it, we do not have current data based on that IEP.

6 **JUDGE HOUSE:** All right. Do you consider
7 any data or any information on the Student's present
8 levels of performance and needs that may include --
9 sorry. I'm not going to speak without looking at
10 you. I'm thinking about how to phrase this. I'm
11 going to rephrase it.

12 Is it your statement that the only
13 information that you consider an IEP is information
14 that you collect from the point of the creation of
15 that IEP onward for determination of ESY services or
16 any other need of the child for education?

17 **THE WITNESS:** We would have a conversation
18 and professional input and parent input as related
19 to the student's needs based upon the IEP.

20 **JUDGE HOUSE:** If a student -- this is a
21 hypothetical because I don't know this history.

22 If a student had had ESY and had had ESY
23 for specific reasons that may pertain to a need for
24 ESY in a particular manner, would you have
25 considered that data?

1 **THE WITNESS:** Yes, if we were afforded the
2 reasons and the data for that decision.

3 **JUDGE HOUSE:** Was that discussed by the
4 team during this meeting?

5 **THE WITNESS:** During this meeting, it was
6 brought up the continued difficulty we have had in
7 obtaining any prior documents other than only the
8 IEP that followed the Student.

9 We had substantial issues with acquiring
10 the permanent cum which Hawaii indicated they gave
11 to the Parent to deliver to us. We have no records,
12 no special education records that were provided by
13 other schools or agencies.

14 **JUDGE HOUSE:** So I think what you were
15 saying is if you have other information that might
16 indicate a necessity to discuss ESY to provide FAPE
17 at that meeting, you would have considered it?

18 **THE WITNESS:** Yes.

19 **JUDGE HOUSE:** Now, [Parent], you may not
20 have been asking that which -- it was triggered by
21 that question. So go ahead.

22 **BY [PARENT]:**

23 **Q.** So are you suggesting that at the November
24 20th meeting, you had no special education records
25 that were historical?

1 A. No.

2 Q. Was there an evaluation, an initial
3 evaluation to determine special education
4 eligibility prior to this meeting?

5 A. Yes.

6 Q. Do you recall asking me to help you obtain
7 records from the Hawaii school district pertaining
8 to that evaluation?

9 A. On numerous occasions.

10 Q. Do you recall your staff receiving those
11 records?

12 A. Pieces and parts, yes.

13 Q. Did you have -- at the time of this
14 meeting on November 20th, did you have the IEP that
15 [Student] moved into the State of Oregon with that
16 was developed from Hawaii?

17 A. Yes.

18 Q. Did you provide ESY services with
19 [Student] during the summer of 2013 because it was
20 stated that [Student] received ESY services in
21 [Student's] IEP from Hawaii?

22 A. Yes.

23 Q. So you did in fact have records,
24 historical in nature, that showed [Student] required
25 ESY services?

1 A. Yes.

2 Q. You stated previously in response to
3 another question that the team would make the
4 decision of whether ESY -- [Student] is eligible for
5 ESY?

6 A. Yes.

7 Q. However, in the November 23th IEP meeting,
8 the team did not make a decision relating to ESY?

9 JUDGE HOUSE: You had a question?

10 [PARENT]: Let me rephrase.

11 Q. Is it your contention that the team made
12 the -- let me rephrase again.

13 JUDGE HOUSE: May I ask?

14 [PARENT]: Yes.

15 JUDGE HOUSE: Is it your statement that
16 the team decided to defer the discussion of
17 eligibility?

18 THE WITNESS: Yes.

19 JUDGE HOUSE: At the November 20th
20 meeting?

21 THE WITNESS: The team, with disagreement
22 by the Parent.

23 JUDGE HOUSE: Okay. Then --

24 BY [PARENT]:

25 Q. If it's your statement that the team made

1 the decision, why are no other members of the team
2 other than yourself and me, referenced under
3 "Discussion Action"?

4 A. I can't explain that.

5 Q. And you made a statement earlier that to
6 the best of your knowledge as you recall, maybe one
7 other person brought up something but that it wasn't
8 reflected in these notes?

9 A. Correct. That's what I recall.

10 Q. So even if one other person brought up
11 something pertaining to ESY, how do -- you still
12 deem it was a team decision when -- I'm sorry --

13 JUDGE HOUSE: You've asked the question.
14 Just let him answer.

15 BY [PARENT]:

16 Q. Yeah, I know. I'm waiting.

17 A. Yes. Yes.

18 JUDGE HOUSE: All right. So he's answered
19 the question. You might not agree.

20 BY [PARENT]:

21 Q. The team decision can be made by two or
22 maybe three people, a team -- I'm going to stop
23 there. A team decision can be made by one, two, or
24 maybe three people in attendance at the IEP meeting?

25 A. They may be the only ones to speak up

1 about it.

2 **Q. Is it your understanding that development**
3 **of an IEP under federal and state regulations should**
4 **be based on a consensus of the IEP team?**

5 A. Yes.

6 **Q. Is it your belief two or maybe three**
7 **people out of nine is a consensus?**

8 A. I believe I interpreted consensus at this
9 meeting and made the decision.

10 **Q. So you interpreted consensus? There was**
11 **not a consensus of the team?**

12 A. Is there a question?

13 **JUDGE HOUSE:** Did you interpret consensus?

14 **THE WITNESS:** Yes, I interpreted
15 consensus.

16 **JUDGE HOUSE:** And what data, from which
17 individuals, did you base consensus, the opinion of
18 consensus was formed?

19 **THE WITNESS:** What data from people?

20 **JUDGE HOUSE:** The team is discussing this,
21 and actually I think that at this point we don't
22 have evidence that more than one other person and
23 Parent.

24 You're saying you believe at that point
25 the team's consensus with the exception of Parent

1 was to defer the IEP discussion. I think [Parent]
2 was asking what was the basis of that belief.

3 **THE WITNESS:** The basis of that belief I
4 would say based on no comments from others; my input
5 to, as part of the IEP team, to that; and minimal to
6 no comments from others on the school-represented
7 team to any disagreement with my opinion on that.

8 **JUDGE HOUSE:** All right. [Parent]?

9 **BY [PARENT]:**

10 **Q. So there was not consensus?**

11 **JUDGE HOUSE:** [Parent], his definition may
12 disagree with yours. At this point he said there
13 was consensus. You can tell me what you believe
14 later.

15 **[PARENT]:** Okay.

16 **JUDGE HOUSE:** Okay?

17 **BY [PARENT]:**

18 **Q. Was there meetings prior to this IEP**
19 **meeting -- planning, programming, anything like**
20 **that, prior to this IEP meeting in which ESY was**
21 **discussed amongst the District employees?**

22 **A.** Not that I can recall.

23 **JUDGE HOUSE:** I'm going to stop right
24 there. It's 12:30. That's a good stopping point,
25 and you can make a note of where we are. It's

1 12:30, and we'll reconvene at 1:30.

2 (A lunch recess was taken from 12:30 p.m.
3 to 1:32 p.m.)

4 JUDGE HOUSE: We are back on the record.

5 And frequently some things will occur to
6 me while I'm at lunch. To maybe facilitate movement
7 a little bit -- I don't want to end up where we're
8 at the end of two days and we don't have what we
9 need.

10 And it's difficult when you're trying to
11 present a case from a parent who's not an attorney
12 and also from -- in a sense you're asking cross-
13 examination questions because there's pieces of
14 information that you want to get to that are really
15 -- in general, on direct you ask general questions,
16 and it's not -- you didn't ask for designation of a
17 District witness as hostile, meaning not that
18 they're hostile to you, but they're not your
19 witness.

20 I'm wondering if it wouldn't be more
21 helpful to either let Mr. Cohn-Lee go to general
22 questioning about the subject matter and then you
23 can follow up, or I'll just ask you to focus on --
24 what I've been understanding is that you're looking
25 at essentially questions of procedural defect at

1 this point?

2 **[PARENT]:** Correct.

3 **JUDGE HOUSE:** And the essence is that even
4 if there is -- remember that even if there is a
5 procedural defect, that you have to have a
6 substantive effect or substantive failure for FAPE.

7 And I'm not saying you don't know law.
8 Actually you've done very well. It's just that's
9 what we need to show or what -- not "we." That's
10 your burden of proof.

11 And I want to make sure that you have the
12 opportunity to get to that.

13 So if there's a way that I can facilitate
14 questions -- not presenting your case. I might do
15 that just to kind of narrow -- or not narrow, but
16 ask the question in a general sense.

17 Or we could change the order of
18 questioning and allow the District to question the
19 witness, and then you would ask direct questions
20 following.

21 So I'll just give you that option. If you
22 want to proceed, just remember that you've kind of
23 got some time limitations.

24 **[PARENT]:** I'd prefer to proceed, if I
25 can, knowing that we have time limitations.

1 JUDGE HOUSE: Okay.

2 [PARENT]: And obviously I'm a bad
3 estimator.

4 JUDGE HOUSE: No. It's hard. We don't
5 get it right. Lawyers don't get it right. Judges
6 don't get it right.

7 Just try to remember that, okay, if you've
8 gotten the answer, you've asked the question, the
9 witness won't necessarily answer the way you want
10 to.

11 What you're going to do later if you get
12 to that is testify and tell me what happened and why
13 you believe there is a failure. And it may be
14 different testimony. So you can testify as to what
15 you recall happening.

16 [PARENT]: Yeah.

17 JUDGE HOUSE: Rather than trying to get
18 the witness to say that for you if that makes sense.

19 [PARENT]: Uh-huh.

20 JUDGE HOUSE: If he recalls it one way,
21 that's what he recalls.

22 [PARENT]: Sure.

23 JUDGE HOUSE: It's his interpretation.

24 [PARENT]: Okay.

25 JUDGE HOUSE: Okay? All right. So go

1 ahead. And your last reference was to the prior
2 meeting --

3 **MR. COHN-LEE:** And, Judge, I'm just
4 wondering, along with that -- and I kind of
5 mentioned this to [Parent]. We were walking down the
6 hallway, and I mentioned a little bit about our time
7 limitations because I think the last spot we want to
8 be in is get to the end of two days and either the
9 District doesn't have time to complete his case or
10 [Parent] doesn't.

11 I'm wondering if we can build in maybe a
12 check-in point in a little bit just to kind of see
13 where we are, see if we're on pace, and then maybe
14 reevaluate.

15 Because my worry is, you know -- I totally
16 understand when you're asking questions, you tend to
17 get immersed in it and lose the track of time and
18 the flow of time.

19 But again, my worry is if we haven't even
20 really finished with [Parent's], you know, direct
21 today and then I get to ask my questions and we also
22 have other witnesses -- especially given the timing
23 importance of this case.

24 I mean one of the central tenets of
25 [Parent's] case is timing and getting a resolution

1 within the due process timelines. And if we have to
2 schedule additional days, that's going to be shot.

3 So I'm just wondering if maybe we can
4 check in at some point and see where we are.

5 **[PARENT]:** I have no problem with a check-
6 in. I should wrap with Mr. Kolb fairly quickly.
7 I'm to a point where I don't have much left to ask.

8 **JUDGE HOUSE:** Okay.

9 **[PARENT]:** And then I don't intend to call
10 myself. And that would leave me with only one other
11 witness.

12 **JUDGE HOUSE:** Okay. All right. And don't
13 let -- anything I've said doesn't mean that you
14 can't ask what you want to ask. I'm just saying
15 let's see if we can -- let's just see what we can do
16 about making sure we're on track.

17 Okay?

18 **[PARENT]:** I'd like to think I'm getting
19 quicker as we go.

20 **JUDGE HOUSE:** You're doing fine. Okay.
21 Go ahead. The last thing you had referenced was the
22 meetings prior to this IEP where the ESY was
23 discussed among the District.

24 And I believe the answer was something to
25 the effect of "No, not that I can recall." That's

1 my "remembery" -- "remembery"? Good grief. Okay.

2 New words.

3 Anyway, so just starting somewhere in that
4 area.

5 [PARENT]: Okay.

6 Q. I'm not going to put "Mr. Kolb" in front
7 of every question. Okay? Is that all right with
8 you?

9 A. I'm okay with that.

10 JUDGE HOUSE: That's fine. Whatever's
11 faster.

12 BY [PARENT]:

13 Q. Would you agree that -- would you agree
14 that -- would you agree that parents have the same
15 rights as every other IEP member under federal and
16 state regulations?

17 A. Yes.

18 Q. Would you agree that parents have the
19 right to produce documentation and records that
20 should be reviewed by the IEP team under state and
21 federal regulations?

22 A. Yes.

23 Q. All right. You previously -- am I correct
24 in assuming that you previously stated that -- you
25 previously stated ESY was not discussed at length in

1 the November meeting due to lack of historical data,
2 that you made mention to the fact that you had no
3 records from Hawaii?

4 A. Very limited, yeah. We had the Priority
5 P.

6 Q. So do you recall us having conversations
7 prior to the November IEP meeting where we had
8 discussed that we were going to -- there was going
9 to be contention over ESY?

10 A. I do. I recall the topic coming up.

11 Q. Okay. So we discussed the fact that we
12 were probably not going to be in agreement on ESY
13 services prior to that IEP meeting?

14 A. I recall that being a definite concern
15 that was brought up by you.

16 Q. All right. And in the November 20th IEP
17 meeting, you had stated earlier that you had
18 consensus, so we scheduled the ESY review for the
19 April, wherever it happened to be, 20th; is that
20 correct?

21 MR. COHN-LEE: Well, I think that
22 misstates the record in terms of the April 20th date
23 but --

24 JUDGE HOUSE: It's April 16th.

25 BY [PARENT]:

1 Q. April 16th?

2 A. 16th. According to the notes in front of
3 us, we agreed it didn't need to be determined then;
4 therefore we checked the box on the IEP, says "To be
5 determined at a later date," at which we identified
6 April 16th, by April 16th to determine the ESY.

7 Q. Okay. And would you agree that the final
8 point of the Discussion Action in "S" -- D-4 under
9 the "Discussion Action" is that the Parent is not in
10 consensus with that decision?

11 A. That date.

12 Q. Would you agree that the final statement
13 in the Discussion Action on this document is that
14 "The Parent is not in consensus with that decision"?

15 A. Yes.

16 Q. Okay. Would it have been within the law
17 as far as you understand federal and state
18 regulations to reconvene an IEP meeting in a couple
19 weeks or a month and include people from Hawaii that
20 had knowledge that you were lacking since you didn't
21 have the data that you wanted?

22 A. Yes.

23 Q. But that was not a consideration? Was
24 that a consideration?

25 A. I don't know if it was a consideration by

1 others on the team. It's not something I had
2 thought of.

3 Q. And to reiterate, others on the team
4 really didn't have much say that day in the ESY
5 discussion; is that correct?

6 A. And again, it was based on what I recall,
7 there was other -- at least one other had spoken to
8 it, but our notes don't reflect that.

9 Q. Would it have been within the law to
10 reconvene another IEP meeting in a couple weeks or a
11 month and have myself provide the documentation that
12 you were missing?

13 A. Yes.

14 Q. That did not occur though; correct? No
15 additional IEP meetings --

16 A. Correct --

17 Q. -- were -- okay. Is that because the
18 decision had already been made in the IEP meeting to
19 not review ESY until April 16th, eligibility -- not
20 review ESY eligibility until April 16th?

21 A. As only one member of the IEP team, I can
22 only represent for myself that that could be a
23 contributing reason as to industry procedures as to
24 why other thoughts of considering ESY were not
25 entertained.

1 Q. I'm only asking you because you had stated
2 that you had made the consensus. So I assumed you
3 spoke for --

4 A. I made a consensus for the meeting --

5 Q. -- a majority at the --

6 THE REPORTER: Okay. Would you please
7 wait until the question is --

8 THE WITNESS: Sure --

9 THE REPORTER: -- completely finished
10 before you answer. "I'm only asking you because you
11 had stated that you had made the consensus. So I"?

12 BY [PARENT]:

13 Q. You had made the consesus -- you stated
14 you had made the consensus previously for the team,
15 that it wouldn't not be discussed and that it would
16 be reviewed on April 16th?

17 MR. COHN-LEE: I am going to object to
18 that. I don't think that's an accurate statement of
19 testimony.

20 JUDGE HOUSE: I think it's possibly a
21 miss- -- it's too vague and too unclear.

22 [PARENT]: I retract, Your Honor.

23 JUDGE HOUSE: And I also think it's been
24 asked and answered.

25 [PARENT]: Bear with me while I move to --

1 JUDGE HOUSE: Sure --

2 [PARENT]: -- other.

3 Q. I'm going to refer to S-13. Do you need a
4 copy?

5 MR. COHN-LEE: Yeah, [Parent], you need to
6 provide the witness with a copy of the exhibits.

7 JUDGE HOUSE: It is standard. If you
8 don't have a copy --

9 [PARENT]: I have. I have copies of
10 everything.

11 THE WITNESS: Thank you.

12 BY [PARENT]:

13 Q. Do you recognize this document?

14 A. I do.

15 Q. What is this document?

16 A. "Prior Notice of Special Education
17 Action."

18 Q. Under "This action is proposed because a
19 meeting was held to discuss an FBA that was done and
20 Parent had requested to discuss transition at Grants
21 Pass High School and ESY."

22 Is that correct to the best of your
23 knowledge what the meeting was going to be about --
24 discuss the FBA, discuss transition to Grants Pass
25 High School, and discuss ESY?

1 A. That is correct.

2 Q. Okay. To the best of your knowledge,
3 there was a meeting invitation -- correct? -- for
4 this meeting?

5 A. To the best of my knowledge.

6 Q. I had requested that in discovery, but I
7 don't believe I received a copy of it; so I can't
8 reference it.

9 But if -- these things under "Action is
10 Proposed Because" would have been on the notice of
11 meeting -- the review the FBA, that the Parent
12 requested to discuss the transmission to Grants Pass
13 High School, and ESY?

14 A. The purpose of the meeting?

15 Q. Right, in the meeting request, the meeting
16 notice, they would have had the same information as
17 this action is proposed?

18 A. Related information. I don't have it in
19 front of me. So --

20 JUDGE HOUSE: Let me ask a question. That
21 is one of the documents that would have been
22 requested was whatever you sent out to indicate this
23 meeting is going to occur and who's going to attend
24 and why it happens.

25 Is there a reason why we don't have it?

1 **THE WITNESS:** That document was handed to
2 [Parent] last week Thursday.

3 **[PARENT]:** I didn't receive it.

4 **THE WITNESS:** It was in that stack.

5 **JUDGE HOUSE:** Do you have that document
6 with you?

7 **MS. LUKA:** It's in the District exhibits,
8 I believe.

9 **[PARENT]:** I was looking for it, but I
10 only see meeting notice, the same prior notice that
11 we're looking at now.

12 **MR. COHN-LEE:** We've got the meeting
13 notice for the April 10th, but it didn't include the
14 March 18th meeting. We've got the meeting minutes
15 and then the prior notice as well, but we didn't
16 include the meeting notice.

17 **JUDGE HOUSE:** Just a moment.

18 **MS. LUKA:** That was the -- it's evidenced
19 by the emails. The emails were attached to it that
20 --

21 **JUDGE HOUSE:** I'm sorry. We can't have an
22 individual testifying. (To the witness) But your
23 testimony is that there was a meeting notice?

24 **THE WITNESS:** Yes.

25 **JUDGE HOUSE:** And that document was

1 provided to [Parent] Thursday, last week?

2 **THE WITNESS:** It was provided prior to the
3 meeting, to the best of my knowledge. I'm not the
4 case manager.

5 **JUDGE HOUSE:** Right.

6 **THE WITNESS:** To the best of my knowledge,
7 it would have been provided prior to the meeting
8 itself.

9 **JUDGE HOUSE:** All right. But at this
10 point this was a question of discovery in which
11 [Parent] had asked for a copy of -- which would have
12 included that document.

13 Was a copy provided in response to the
14 direction of a motion?

15 **THE WITNESS:** Yes. Thursday afternoon a
16 stack of information was provided to [Parent] by my
17 administrative assistant, Emily Luka.

18 **JUDGE HOUSE:** But you didn't look at each
19 document, and so you don't know if it had that one
20 in it?

21 **THE WITNESS:** I looked at the stack of
22 documents prior to her asking "how do we need to get
23 these to them." I said, "At this rate we're going to
24 have to hand-deliver because it's too late to mail."

25 **JUDGE HOUSE:** Okay. And --

1 **THE WITNESS:** And I looked through those.

2 **JUDGE HOUSE:** And you believe it was in
3 that document --

4 **THE WITNESS:** Yes, I do.

5 **JUDGE HOUSE:** And did you, [Parent],
6 submit that or have a copy of that now?

7 **[PARENT]:** No. I would have made it an
8 exhibit if I had been able to find it in the stack.

9 **JUDGE HOUSE:** All right. We'll just have
10 to do without it. Apparently the testimony is under
11 oath right now he gave it to you.

12 **BY [PARENT]:**

13 **Q.** Do you recall -- no. I retract.

14 To the best of your knowledge, was I
15 coming to this meeting expecting that we would
16 discuss ESY?

17 **A.** Yes.

18 **Q.** Thank you. Same Exhibit, S-13, other
19 options we considered were -- well, let's go through
20 it. The actions from the meeting were spelled out,
21 and they had to do with the FBA.

22 Other options they considered were not
23 conducting a meeting and my request to determine ESY
24 at this meeting, the Parent's request to determine
25 ESY at this meeting.

1 And then to discuss ESY is under "We
2 rejected these options because ESY will be
3 determined consistent with the dates indicated in
4 the current IEP"; is that correct?

5 A. That's how this document reads, correct.

6 Q. To the best of your knowledge, in that
7 meeting that was held on -- it was the 18th;
8 correct?

9 A. Correct.

10 Q. My date for the prior written notice says
11 the 31st.

12 Do you recall the meeting of the 18th?

13 A. I do.

14 Q. Do you recall me wanting to discuss ESY at
15 that meeting?

16 A. I do.

17 Q. Was ESY discussed at that meeting?

18 A. Eligibility was not discussed at that
19 meeting. Whether or not to determine eligibility was
20 discussed at that meeting.

21 JUDGE HOUSE: You said "eligibility." Did
22 you say ESY?

23 [PARENT]: I said "ESY." He said
24 "eligibility."

25 THE WITNESS: Eligibility for ESY.

1 **JUDGE HOUSE:** Now you answered him.

2 **THE WITNESS:** I'm sorry.

3 Eligibility for ESY was not discussed at
4 that meeting. Whether or not to consider
5 eligibility for ESY was discussed at that meeting.

6 **BY [PARENT]:**

7 **Q. So what was the extent of the discussion**
8 **regarding ESY at that meeting to the best of your**
9 **recollection?**

10 A. To the best of my recollection, a few
11 others may have chimed in regarding the need to
12 continue to collect data for a second break and
13 service and, as the District rep agreeing to
14 disagree on this, made a determination to adhere to
15 the determination of making the determination April
16 16 -- the determination by April 16th.

17 **[PARENT]:** I'm sorry. I have the minutes.
18 So are we going to do the same thing with your
19 minutes?

20 Do you have the minutes, Rich? Because I
21 have that one page of minutes again.

22 **MR. COHN-LEE:** Yeah, probably need to,
23 [Parent]. Again, I prefer we were dealing with a
24 complete document.

25 Yeah, D-5 is the complete minutes for the

1 meeting.

2 **[PARENT]:** The pages are probably going to
3 be out of order again.

4 **MR. COHN-LEE:** They might, yeah.

5 **JUDGE HOUSE:** That's all right. We'll
6 deal with them. S-13, any objections from the
7 District?

8 **MR. COHN-LEE:** Yeah. I think we just
9 determined that it's incomplete; so I guess I would
10 object.

11 **JUDGE HOUSE:** No. "S" --

12 **MR. COHN-LEE:** Oh. S-13, no. Prior
13 notice? No objection to that.

14 **JUDGE HOUSE:** Thank you.

15 **(Whereupon, Parent's Exhibit S-13 was**
16 **admitted into evidence.)**

17 **[PARENT]:** So my S-14 is now D-5?

18 **MR. COHN-LEE:** And so we're withdrawing S-
19 14 --

20 **JUDGE HOUSE:** Thank you --

21 **MR. COHN-LEE:** -- and using D-5 instead.

22 **(Whereupon, Parent's Exhibit S-14 was**
23 **withdrawn from evidence.)**

24 **BY [PARENT]:**

25 **Q. So on page 8 of 9 in Exhibit D-5, it**

1 appears that on the left on "Extended School Year
2 Discussion," and then I assume the center part is
3 what occurred -- I retract.

4 Do you recall who was in that meeting, Mr.
5 Kolb?

6 A. Recall Kirby Erickson, Dorothy Jewell,
7 Doug Ely, myself, yourself. Lee Erickson? I think
8 that's -- no. Lee Savage, independent evaluator.
9 And off the top of my head, I don't recall anyone
10 else --

11 Q. The teacher? Teacher would have been in
12 there; right?

13 A. Yes, Dorothy Jewell.

14 Q. Okay.

15 JUDGE HOUSE: As a matter of procedure, is
16 it normal to list the attendees on the first page of
17 the --

18 [PARENT]: Apparently it is, yes. Sorry.

19 JUDGE HOUSE: That's all right. I'm just
20 doing it because I know that's where to look for it.
21 (To the witness) So if those individuals are listed,
22 did they attend?

23 THE WITNESS: "Attendees": yes, yes, yes,
24 yes, yes, yes, and yes.

25 JUDGE HOUSE: All right. So we're looking

1 at page 8 of 9?

2 **BY [PARENT]:**

3 **Q. Under the "Extended School Year**
4 **Discussion," the first note is that "KK explained**
5 **that the IEP is accepted on 11/20 with the mediator,**
6 **was agreed that the team would meet on the 16th to**
7 **determine an ESY."**

8 **So ESY wasn't discussed -- was ESY -- I'm**
9 **sorry. Let me rephrase this.**

10 **The extent of the discussion of ESY in**
11 **this meeting was you stating that ESY would not be**
12 **discussed until April 16th; is that fair to say?**

13 **A. No.**

14 **Q. Okay.**

15 **JUDGE HOUSE:** And a more general question.

16 **THE WITNESS:** Sure.

17 **JUDGE HOUSE:** What was discussed about ESY
18 at this meeting to your memory?

19 **THE WITNESS:** To my memory it was rehashed
20 of the original determination of why the District
21 team noted [Parent's] disagreement on November 20th,
22 indicated why they needed to make a determination
23 after spring break.

24 **So that was refreshed at the meeting at**
25 **that point. Without hearing any further input from**

1 the school team, hearing -- again noting [Parent's]
2 desires, recognizing that they're in conflict, made
3 District rep determination to afford the District a
4 second break to collect data and make the
5 determination by April 16th.

6 JUDGE HOUSE: [Parent]?

7 BY [PARENT]:

8 Q. Again, as in the meeting in November, it
9 appears that the only people according to this
10 record that were discussing ESY were you and I;
11 would you agree to that?

12 A. I agree, according to this record.

13 Q. And would you agree that the record is
14 correct on that?

15 A. It's my recollection, again, cannot recall
16 specific comments from others.

17 Q. So you would agree that the record is
18 correct?

19 A. I would agree that the record is
20 reasonably correct.

21 Q. Would you agree that data existed on March
22 18th?

23 A. Yes.

24 Q. If data existed on March 18th, why could a
25 discussion about ESY not have occurred?

1 A. So regression/recoupment data was
2 collected for the winter break. The most recent IEP
3 had just been developed and had fewer than probably
4 three total, four total weeks of implementation,
5 substantial changes, and instructional goals.

6 And so data was collected and existed.

7 And your question is why -- can you please
8 restate that question. I'm trying to --

9 **JUDGE HOUSE:** He asked why not talk about
10 it then.

11 **BY [PARENT]:**

12 **Q. If it existed, why couldn't ESY have been**
13 **discussed at that meeting?**

14 A. Data -- ESY could have been further
15 discussed at that meeting.

16 **Q. And it was not discussed. Why was it not**
17 **discussed?**

18 A. There was a disagreement between the
19 District and the Parent, yourself, on whether or not
20 additional regression/recoupment data was necessary.

21 **Q. Do you feel that, in your opinion, that**
22 **disagreement regarding whether additional data was**
23 **required -- let me rephrase this. Strike that. I'm**
24 **sorry.**

25 **You mentioned previously in your statement**

1 that as of March 18th, only three to four weeks of
2 data was gathered?

3 A. No.

4 Q. There was --

5 A. As of Christmas break, the first
6 regression/recoupment data collection, only three to
7 four weeks of the new IEP was implemented prior to
8 the start of that break in instruction.

9 Q. And you contend that ESY can only be
10 determined on the currently active IEP?

11 A. That ESY -- our -- that ESY decisions are
12 based on the identified needs of the Student on the
13 current IEP, yes.

14 [PARENT]: Okay. I have a question for
15 the court.

16 JUDGE HOUSE: Go ahead.

17 [PARENT]: I have data that -- I have data
18 to show that there was data in a manner that could
19 be --

20 JUDGE HOUSE: That's why I asked you about
21 testifying.

22 [PARENT]: So I can't get it in unless I
23 testify, is that --

24 JUDGE HOUSE: Well, I can't help you with
25 your case.

1 **[PARENT]:** I understand.

2 **JUDGE HOUSE:** The District is giving you
3 the answers the District is giving you. So if
4 there's something else out there that's pertinent
5 they're not telling you, it has to come from you.

6 **[PARENT]:** So since we didn't decide on
7 whether they were going to accept all the exhibits
8 in the beginning -- correct?

9 **JUDGE HOUSE:** Right.

10 **[PARENT]:** -- does my S-20 through S-27
11 become part of the record anyway without me
12 questioning somebody about it or without me
13 testifying to it?

14 **JUDGE HOUSE:** If there's no foundation
15 from anyone as to what these are, they wouldn't be
16 admitted. So someone has to tell me what they are,
17 and if the District doesn't offer them, that would
18 be --

19 **[PARENT]:** Okay. I understand --

20 **JUDGE HOUSE:** -- you.

21 **[PARENT]:** Bear with me, please.

22 **JUDGE HOUSE:** Sure. If there's something
23 in these cases, [Parent] -- it's not strictly
24 adhered to. If something comes to you that you need
25 to ask a witness -- and the District can do the same

1 thing -- you can ask them later.

2 Just make a note of it if you recall it
3 and then go, "I didn't ask this, but it's relevant
4 to what I was trying to get to."

5 It won't go on forever, and it won't go
6 past two days. But I don't want you to get hung up
7 in thinking that's it's life or death that you ask
8 every single question right now.

9 **[PARENT]:** Okay.

10 **JUDGE HOUSE:** You need to ask your
11 questions, but to the extent one or two items come
12 up later, you can ask those, or they may come up in
13 cross-examination. I don't know if that helps you
14 get to the next phase.

15 **[PARENT]:** Sure, it does. I don't think I
16 have any further questions for Mr. Kolb.

17 **JUDGE HOUSE:** All right. What we'll do is
18 I want to see if -- it's only been 35 minutes, but I
19 do want to take into account the court reporter.

20 Will you let me know if you need a break?

21 **THE REPORTER:** Okay. I'm okay now.

22 **JUDGE HOUSE:** All right. We'll continue
23 with Mr. Kolb, and I'll keep an eye out, and maybe
24 by 3:00 if not earlier. All right?

25 **[PARENT]:** I'm sorry. I have another

1 matter.

2 JUDGE HOUSE: Oh.

3 [PARENT]: So I have another opportunity
4 to ask questions of Mr. Kolb after Mr. Cohn-Lee is
5 finished?

6 JUDGE HOUSE: Yes. It's called
7 "Redirect," or it could be "Re-cross." In these
8 situations, the name of it is not important. If
9 it's to clarify what has been testified to, that's
10 allowed.

11 If it's completely not been addressed, I
12 just gave you permission to ask some of those.

13 [PARENT]: Okay.

14 JUDGE HOUSE: Not too many because Mr.
15 Cohn-Lee will always have the right to cross-examine
16 on that point.

17 [PARENT]: Okay.

18 JUDGE HOUSE: Okay. Go ahead.

19 CROSS-EXAMINATION

20 BY MR. COHN-LEE:

21 Q. So, Mr. Kolb, are you okay continuing now,
22 or do you want to take a little break?

23 A. Yeah, I'm okay.

24 Q. Are you sure?

25 A. Yeah.

1 Q. I'm going to try to fill in some of the
2 gaps that [Parent] covered with you, and let's start
3 at the beginning regarding your background. [Parent]
4 already covered your current position but didn't
5 really touch on some of the other background
6 information.

7 If you could, paint us a thumbnail sketch
8 of your responsibilities as director of special
9 education for the District.

10 A. Sure. I'm oversight of all District-wide
11 programs for special education, hiring staff,
12 evaluating staff, implementing, you know, ensuring
13 compliance with IDEA.

14 And additionally implementing new
15 programs, directing resources. How else. Yeah. So
16 conclude there.

17 Q. Okay.

18 A. Did you ask my history?

19 Q. Yeah, I'm going to get into that in just a
20 moment, yeah.

21 So let's go back a little further though
22 and paint a thumbnail sketch of your education
23 starting with college forward?

24 A. Okay. So graduated with a degree in
25 special education. I went out and taught self-

1 contained, sight-based classrooms for special
2 education in the State of Oregon and resource room
3 programs, general education teacher in Oregon.

4 **JUDGE HOUSE:** If you can slow down just a
5 bit.

6 **THE WITNESS:** Sorry.

7 **JUDGE HOUSE:** It's okay.

8 **THE WITNESS:** Then became an
9 administrator. Was actually a special education
10 coordinator for Medford School District for a year,
11 at which time I was recruited back to Grants Pass
12 School District to be an assistant principal at the
13 middle school for three years.

14 Then assistant principal at the high
15 school for three years. I've been an elementary
16 principal for a year, and then was asked to be the
17 director of special education services with Grants
18 Pass, and have been serving in that capacity for the
19 past roughly three years.

20 **BY MR. COHN-LEE:**

21 **Q.** And I want to shift gears now a little bit
22 and talk specifically about the student, [Student].

23 What has been your involvement or
24 responsibilities with regard to [Student's]
25 educational services?

1 A. I was initially contacted by [Parent],
2 notifying us of their move to Grants Pass School
3 District and his inquiry about resuming extended
4 school year services and basically beginning the
5 conversations of what next school year might look
6 like, but the priority being establishing extended
7 school year services as our best effort to implement
8 the Hawaii IEP.

9 At which time location services deemed --
10 or the District office actually. We were able to
11 provide support staff in an empty office at the
12 District office, which happened to be right next to
13 my office.

14 And so as a result I got to see [Student]
15 on a daily basis while [Student] was attending ESY
16 as well as spelling staff. Specifically during
17 lunch, doing observations of [Student] on one or two
18 occasions, may have blocked his attempts to bolt
19 from the building or the staff [Student] was working
20 with at the given time.

21 **Q. Okay. And just quickly, what is**
22 **[Student's] disabling condition or category?**

23 A. [Student] is currently identified as a
24 student significantly impacted with autism spectrum.

25 **Q. When exactly did [Student] move to Oregon?**

1 A. [Student] -- I think the plane landed on
2 June 27th of 2013.

3 Q. And when did [Student] first enroll in the
4 District?

5 A. The first Monday after the 4th of July; so
6 I believe that would have been Monday, July 7th.

7 Q. Now, as a general matter, how does the
8 District handle out-of-state transfers?

9 A. We -- we take a look at the IEP that comes
10 with the student and implement the services as
11 listed in that IEP.

12 Q. Okay. And a related question: Why did
13 the District provide ESY for [Student] during the
14 summer of 2013?

15 A. [Student's] Hawaii IEP indicated
16 [Student's] need for extended school year service,
17 and we wanted to make no haste in immediately
18 implement that IEP as we were -- had the student
19 arrive during -- when [Student] would normally have
20 been scheduled for services according to the Hawaii
21 IEP.

22 Q. Okay. Again, I want to shift gears once
23 again and move a little bit forward in time to
24 November of 2013.

25 Okay?

1 Take a look at Exhibit D-3, so the black
2 binder in front of you.

3 And before we even do that, take a look at
4 Exhibit D-2.

5 A. (Witness complies.)

6 Q. What's D-2?

7 A. D-2 is notice of the team meeting, IEP
8 team.

9 Q. And for which meeting?

10 A. This [Student's] would be for the meeting
11 scheduled for Wednesday, November 20th, 2013.

12 MR. COHN-LEE: Okay. I'd offer Exhibit D-
13 2.

14 JUDGE HOUSE: Any objections, [Parent]?

15 [PARENT]: No objections.

16 JUDGE HOUSE: It's admitted.

17 (Whereupon, District's Exhibit D-2 was
18 offered and admitted into evidence.)

19 BY MR. COHN-LEE:

20 Q. Let's move to D-3. What is D-3?

21 A. D-3 is the IEP that was developed at the
22 meeting on November 20th, 2013.

23 MR. COHN-LEE: Okay. I offer D-3.

24 JUDGE HOUSE: [Parent]?

25 [PARENT]: No objections.

1 JUDGE HOUSE: All right. It's admitted.

2 (Whereupon, District's Exhibit D-3 was
3 offered and admitted into evidence.)

4 BY MR. COHN-LEE:

5 Q. What was the purpose of D-3?

6 A. D-3, [Student] was a new student to the
7 State of Oregon. An eligibility was conducted. An
8 eligibility determination was conducted the day
9 prior on November 19th.

10 And we wanted not to waste any time,
11 comply with statutes, and get a new IEP developed
12 and implemented according to Oregon standards and
13 processes and procedures.

14 Q. And when you mean "eligibility," you're
15 referring in this particular instance to [Student's]
16 eligibility for special education services in
17 Oregon; is that correct?

18 A. In Oregon, that is correct.

19 Q. Okay. Okay.

20 JUDGE HOUSE: And I want to just make sure
21 I understand that correctly.

22 There was an eligibility determination the
23 prior day?

24 THE WITNESS: Correct.

25 JUDGE HOUSE: Okay.

1 BY MR. COHN-LEE:

2 Q. Now, we've already heard from your
3 colloquy with [Parent] that there was an ODE-
4 appointed facilitator at this meeting named --
5 actually for the record it's Julie Gentili-Armbrust.
6 There's a hyphen in there, and I think it's spelled
7 out in the meeting notes.

8 But why did you decide to contract with a
9 mediator -- rather, facilitator from ODE?

10 A. The reason for that -- it was my idea
11 because I knew it was available through the Oregon
12 Department of Education. [Parent] and the District
13 had -- I guess things hadn't gone super smooth in
14 terms of communication and his interpretation of
15 services being provided.

16 And quite possibly my perception of his
17 unhappiness with how things were going, I initiated
18 with [Parent] the opportunity to have a facilitated
19 IEP meeting by somebody appointed through the Oregon
20 Department of Education, a neutral party, in hoping
21 that might be more productive in getting --
22 accomplishing a quality IEP for [Student].

23 Q. And was it your understanding and
24 impression that Ms. Armbrust was someone that was
25 appointed and was essentially a representative from

1 ODE?

2 A. Yes, that is correct.

3 Q. And was it your impression that Ms.
4 Armbrust was familiar with generalized special
5 education law and procedure, including ESY?

6 A. She came across as extensively
7 knowledgeable.

8 Q. Again, within this IEP meeting, I want to
9 hone in further on the specific discussions
10 regarding ESY. And I'm going to have you take a
11 look at Exhibit D-4.

12 And in the interest of time-saving, we've
13 previously identified this as meeting minutes from
14 the November 20th, 2013, IEP meeting, and I think
15 you used this during your colloquy with [Parent].

16 I'm going to have you shift forward to
17 page 23 of 24.

18 A. (Witness complies.)

19 Q. And have you focus in on the paragraph
20 regarding "Extended School Year" under "Agenda
21 Item."

22 Do you see that there?

23 A. I do.

24 Q. So did you in fact discuss ESY at the
25 November 20th meeting?

1 A. Yes.

2 **Q. What was the substance of the discussion?**

3 A. The substance of that discussion was
4 ultimately the District felt that data was necessary
5 to make ESY determinations if at all available. And
6 so I think [Parent] agreed with that in essence.

7 And as this statement here indicates, I
8 believe my understanding of this statement and
9 recall of what happened is [Parent] agreed that it
10 did not need to be determined that day but at a date
11 to be determined later.

12 As that discussion went on --

13 **Q. Let me stop you there for one moment.**

14 A. Okay.

15 **Q. In looking at the particular entries in**
16 **here, there is an entry indicating, "RP indicated he**
17 **does not want to determine that now but is agreeable**
18 **to discuss ESY after spring break."**

19 **That was [Parent's] statement?**

20 A. That was his initial statement.

21 **Q. When you said, "he does not want to**
22 **determine that now," "that" was ESY?**

23 A. Correct.

24 **Q. So in fact it was your understanding at**
25 **that meeting that there was agreement by the entire**

1 team, including the Parent, that it was not
2 necessary to determine ESY at that November time
3 point; correct?

4 A. That is correct.

5 Q. Now, I'd like to talk a little bit about
6 Julie Gentili-Armbrust's feedback and comments
7 during this colloquy. Okay?

8 Using these notes as a reference, what
9 exactly -- how did Julie Gentili-Armbrust assist the
10 team in this discussion?

11 A. Julie shared related practices based on
12 her knowledge of other districts in the State of
13 Oregon.

14 And what she noted was accepted practices
15 by the Oregon Department of Education as needing to
16 collect data to support ESY decision-making and that
17 a date -- a later date in time could be determined
18 to make those decisions.

19 Q. Okay. During this colloquy, did the
20 Parent have the opportunity to provide input?

21 A. Yes.

22 Q. And in fact based on these entries, did
23 [Parent] provide input?

24 A. Yes, he did.

25 Q. Now, we'd indicated that there was at

1 least some -- there was agreement that November --
2 at that point did not require an ESY determination,
3 but then we discussed spring break, and there's some
4 commentary from [Parent] about "He's agreeable to
5 discuss ESY after spring break."

6 But ultimately there was disagreement by
7 the Parent regarding the selection of April 16th as
8 the date by which ESY would be considered; correct?

9 A. Yes, that is correct.

10 JUDGE HOUSE: I'm going to back up and ask
11 a question, Mr. Cohn-Lee.

12 MR. COHN-LEE: Yeah.

13 JUDGE HOUSE: Because this is wording,
14 notes taken by a District individual. "KK indicated
15 that if we address ESY prior to April, it will only
16 include data results for winter break. RP indicated
17 he does not want to determine that now but is
18 agreeable to discuss ESY after spring break."

19 MR. COHN-LEE: Correct.

20 JUDGE HOUSE: I understood your testimony
21 to say that Parent is referring to the discussion of
22 ESY and the -- as being the "that."

23 Is that your recollection, or is that from
24 your reading of this statement?

25 THE WITNESS: Can you identify which

1 sentence you're referring to?

2 **JUDGE HOUSE:** Okay. It's the second and
3 third statements. It's actually the whole
4 paragraph.

5 **THE WITNESS:** "RP indicated he does not
6 want to determine that" --

7 **JUDGE HOUSE:** "That" --

8 **THE WITNESS:** -- "now" --

9 **JUDGE HOUSE:** -- "now" --

10 **THE REPORTER:** Okay. One at a time,
11 please. "RP indicated [Student] does not want to
12 determine that now."

13 **JUDGE HOUSE:** Sorry. "That" is an unclear
14 antecedent, and it could refer to a lot of things.

15 My question is: From your memory, do you
16 remember what "that" was, or are you interpreting it
17 from this note?

18 **THE WITNESS:** No, I recall that.

19 **JUDGE HOUSE:** Okay. And so your
20 recollection is now that Parent didn't want to
21 discuss ESY at this time?

22 **THE WITNESS:** Correct. Make the
23 determination.

24 **JUDGE HOUSE:** Can you further explain
25 that?

1 **THE WITNESS:** As Ms. Julie Gentili-
2 Armbrust shared, she actually opened the dialogue
3 for this topic area with this common practices for
4 students who are new to the state and District.

5 Conversation quickly went to it was
6 acceptable to not make a determination of ESY by
7 [Parent] and the District.

8 **JUDGE HOUSE:** Okay. So in this case Ms.
9 Armbrust is actually saying to the parties "this is
10 what is within the parameters of acceptable."

11 And then Mister -- or Parent responded,
12 essentially responded to that information.

13 Was it your understanding that if Parent
14 could have had ESY discussion at this time, he
15 wanted that, or was there a negative inference that
16 if it was determined now it wouldn't happen? Was
17 there any --

18 **THE WITNESS:** No --

19 **JUDGE HOUSE:** -- inferences to that --

20 **THE WITNESS:** -- no.

21 **JUDGE HOUSE:** So when you are writing --
22 or the note said "he did not want to determine that
23 now," go ahead and tell me what "that" was.

24 **THE WITNESS:** A determination for extended
25 school year services.

1 JUDGE HOUSE: Okay.

2 BY MR. COHN-LEE:

3 Q. And flowing from the judge's questioning,
4 so we established that at that time there appeared
5 to be consensus that it was not necessary to make
6 the ESY determination as of November 20th. [Parent]
7 had a concern with waiting until April 16th; is that
8 correct?

9 A. That is correct.

10 Q. Okay. And in fact what was [Parent's]
11 concern when he heard about the proposal to have a
12 consideration date of April 16th?

13 A. His concern was that didn't afford him
14 time to file due process and render a decision as to
15 the substantive outcome should they not be in his
16 favor.

17 Q. And you indicated previously that in fact
18 you did recall at least one other person had brought
19 up this issue of a need for data collection. We'll
20 hear from other witnesses about team participation.

21 But at a minimum, during his colloquy, do
22 you recall any member of the team, other than
23 [Parent], speaking up and disagreeing with that
24 colloquy?

25 A. Disagreeing with the colloquy of --

1 **Q. The need to collect data and the need to**
2 **prudently wait until April 16th.**

3 A. Yes. I -- I recall others speaking up. I
4 do not know exactly who. But data was referenced by
5 one or more of the Grants Pass team members at the
6 table at that time.

7 **Q. And bottom line, at the end of that**
8 **colloquy, did any of those team members from the**
9 **District -- I understand [Parent] did not agree.**

10 But any other District members, did any of
11 them voice disagreement with that ultimate proposal
12 to have a decision by April 16th?

13 A. No.

14 **Q. Again, focusing in on how this District**
15 **determines ESY in the first place, generally, what**
16 **is your understanding as to the basis for**
17 **determining whether a student qualifies for ESY in**
18 **Oregon?**

19 A. In Oregon, based on the OARs, the OARs
20 looked at progression --

21 **[PARENT]:** I object.

22 **JUDGE HOUSE:** Pardon?

23 **[PARENT]:** I object.

24 **JUDGE HOUSE:** Okay. And why?

25 **[PARENT]:** Object to the question in the

1 inference of how it's determined in Oregon, plays no
2 specific role in how it's determined in this
3 specific District.

4 **MR. COHN-LEE:** Actually, [Parent] had
5 extensive colloquy about what the Oregon regulations
6 do or don't require with regard to ESY. I think
7 it's fair for the witness to respond to that.

8 **JUDGE HOUSE:** I'm going to overrule, and
9 for another reason: As a director of special
10 services, he has to have knowledge of what he
11 believes Oregon's policies are.

12 **[PARENT]:** Okay.

13 **JUDGE HOUSE:** Go ahead.

14 **BY MR. COHN-LEE:**

15 **Q.** So, I'm sorry.

16 **A.** Please restate the question.

17 **Q.** Sorry. Yeah. What is your understanding
18 as to the basis for determining whether a student
19 qualifies for ESY in Oregon?

20 **A.** The basis for determining ESY is
21 regression and recoupment of targeted skills and
22 behavior.

23 **Q.** And just generally, are you aware from
24 trainings and from reading decisions, are you aware
25 whether other states or different states may have

1 **different standards or bases for making ESY**
2 **determinations?**

3 A. Yes. I am aware things are done
4 differently state by state, possibly region by
5 region around the country.

6 Q. Okay. What I'd like to do is have you
7 focus in on Exhibit D-1. And you've looked at this
8 document previously, the copy that was in the
9 Parent's binder while I'm using the District
10 reference.

11 And could you just identify D-1.

12 A. D-1 is the school year guidance and the
13 special education handbook provided to all special
14 education providers in our District.

15 MR. COHN-LEE: Okay. I'd offer Exhibit --
16 actually, you know what? Let's proceed.

17 Q. So that's page 1 and 2. What's on page 3?

18 A. Page 3 is the ESY plan. It shows a
19 student being identified as needing extended school
20 year services. This would be the plan to implement
21 those services and provide to ensure they get ESY.

22 Q. Page 4 and 5, these are the same pages
23 that [Parent] brought up. I think he had labeled
24 them as a separate Parent Exhibit.

25 But in fact these four documents, are they

1 an integrated, as far as the District's special
2 education --

3 A. Yes, they are.

4 MR. COHN-LEE: I'd offer Exhibit D-1 at
5 this time.

6 JUDGE HOUSE: Any objections?

7 [PARENT]: No.

8 JUDGE HOUSE: It's entered.

9 (Whereupon, District's Exhibit D-1 was
10 offered and admitted into evidence.)

11 BY MR. COHN-LEE:

12 Q. Looking at page 1 of D-1, when you talk
13 about the need to measure recoupment and regression
14 information data, what is your understanding of what
15 "regression" means?

16 A. "Regression" would be a loss of skills or
17 abilities to demonstrate identified areas that we
18 measure.

19 Q. Is it your understanding that regression
20 means any loss of skills?

21 A. The term "regression" in and of itself is
22 a loss of skills.

23 Q. Okay. And can it be any loss or
24 regression, however small?

25 A. However small or however, yeah, dramatic,

1 a loss is considered a regression. We have kids
2 with reading summer regression, both special ed and
3 non-special ed. So --

4 Q. Okay.

5 A. Yeah.

6 Q. And if you look above under "Criteria For
7 ESY Services" in the No. 1, there's a reference to
8 "Student must demonstrate undue regression and
9 recoupment of a skill."

10 Again, what is your understanding of the
11 term "undue"?

12 A. "Undue," I believe -- I believe and we
13 provide guidance to discuss as an IEP team --
14 significant, a large amount of regression, and an
15 inability to recoup or regain those skills or
16 behaviors back within a reasonable period of time.

17 Q. Based on your experience as an educator
18 both in and out of the Grants Pass School District
19 and your experiences within the District, is it
20 unusual for all students, whether or not special ed
21 or otherwise, to demonstrate some regression after a
22 significant break such as a summer break?

23 A. It is not unusual.

24 Q. Okay. And therefore, when we're talking
25 about the term of "RESY" and whether a student

1 **qualifies for ESY, is that the kind of regression**
2 **we're talking about?**

3 A. No.

4 **Q. What is regression, "undue regression" as**
5 **defined by the regulations?**

6 (Cell phone rang.)

7 [PARENT]: Sorry.

8 **JUDGE HOUSE:** It's all right.

9 **THE WITNESS:** Substantial, to the point at
10 which it's evident by the professionals and the team
11 involved in supporting that child that without
12 maintenance it significantly impacts their ability
13 to receive FAPE.

14 **BY MR. COHN-LEE:**

15 **Q. Okay. Would you describe it as an unusual**

16 --

17 A. Unusual, significant, yes.

18 **Q. And likewise would the same apply for the**
19 **recoupment?**

20 A. Yes, yes.

21 **Q. And to you what does "recoupment" means?**

22 A. "Recoupment" means to be able to re-access
23 or re-demonstrate or move back to a level of
24 performance or performance range just prior to the
25 break in service.

1 Q. Okay. There was a -- let me ask you this:
2 I think there was a suggestion by [Parent] that it
3 would be sufficient to base the ESY decision --
4 whether in November or after the winter break, at
5 some point before April -- that would have been
6 sufficient to base an ESY decision on the fact that
7 [Student] had received services in the summer of
8 2013.

9 In your opinion, why would or wouldn't
10 that be appropriate?

11 A. I don't believe that would be appropriate
12 because hopefully things -- kids are getting better.
13 They're able to recoup and recover and gain skills
14 over time pending the individual growth of that
15 student.

16 So the need for ESY, it should be
17 revisited annually to identify what are the areas of
18 skill and need specifically for that student based
19 on the comprehensive development of the IEP.

20 Q. I think you testified before that the
21 District stood in the position to provide ESY
22 services because it received the Hawaii IEP and it
23 was still the current IEP in effect when [Student]
24 arrived during the summer of 2013.

25 But in order to make a determination of

1 that continuing ESY services for summer of 2014,
2 what would be your concerns about using that -- the
3 document you did receive from the Hawaii school
4 district?

5 A. There was no reference to data,
6 determination, what was determined that the student
7 needed to continued maintenance and support in. It
8 only stated that ESY services need to be provided
9 after a ten-day break in service.

10 Q. And for example, did the Hawaii IEP
11 contain any actual data such as recoupment or
12 regression data?

13 A. No.

14 Q. You had mentioned that you had received
15 relatively few documents from the Hawaii school
16 district, either from the school district or from
17 the Parent.

18 In fact had you made efforts to retain the
19 full records from the Hawaii school district?

20 A. Yes. Records request from every building
21 that was associated with the Kailua school and/or
22 district at multiple levels and efforts. We had a
23 request for records to everybody we possibly could,
24 and to no avail.

25 Q. Okay. What did the Kailua, Hawaii, School

1 District inform you about the status of records and
2 how you could obtain them?

3 A. That they provided the records to the
4 Parent to bring to the new school district since the
5 student would be resuming services immediately upon
6 enrolling with us.

7 Q. And in fact did you ever receive the type
8 of information you're referencing from the Parent?

9 A. No.

10 Q. So was there any way in your view or the
11 team's view to validate whether or why the District
12 concluded that [Student] needed ESY services?

13 A. No. There was no way for us to be -- have
14 that information as to why that determination was
15 made for ESY.

16 Q. And staying on this topic a little bit
17 more and just talking about this general concept,
18 [Parent] I think is making the argument that
19 historical data could serve as the basis for
20 qualifying Student for extended school year
21 services.

22 Let me just ask you as an initial
23 foundational question, in your position, are
24 children -- are students static? Do they stay the
25 same over time necessarily?

1 A. No. Hopefully we're educating them, and
2 they're growing and gaining skills and improving.

3 Q. Well, I'm going to turn around the
4 question I guess a little bit.

5 In your view as a special education
6 director, would it be defensible for the District to
7 say that, for example, because a student did not
8 qualify for extended school year services during the
9 summer of 2013, that based on that information, that
10 student should not qualify for ESY during the summer
11 of 2014?

12 A. That wouldn't be reasonable.

13 Q. Why not?

14 A. Based on that student's needs throughout
15 the year, the identified needs based on the team's
16 decisions, development of goals, objectives, and
17 services should guide that determination as to
18 whether or not the identified skills are recoupable,
19 or recouping.

20 Q. And in your experience and certainly in
21 this particular case, is it not true that students'
22 educational needs change over time?

23 A. Absolutely.

24 Q. And in fact in this case, while [Student]
25 arrived with a Hawaii IEP that was in effect for

1 roughly -- September, October, and part of November,
2 so maybe about three months, in fact the team did
3 convene an IEP meeting on November 20th, 2013;
4 correct?

5 A. Correct.

6 Q. And during that time were [Student's]
7 goals and objectives substantially revised?

8 A. Significantly, absolutely.

9 Q. So would it be comparing apples and
10 oranges to be necessarily looking at what his needs
11 were under the Hawaii IEP --

12 A. Yes --

13 Q. -- with regard to the Grants Pass pass
14 IEP?

15 A. Yes.

16 Q. And again, stepping back a moment, just a
17 general matter, is it your understanding that under
18 the IEP, for example, when convening an annual IEP
19 or a regular IEP meeting, that there are something
20 called the "Present Levels of Educational
21 Performance"; correct?

22 A. Yes.

23 Q. And is it not true that the needs of the
24 student, including the goals and objectives, are
25 determined based upon current information regarding

1 the student, not necessarily historical data in the
2 past regarding student performance?

3 A. That is correct, it would be present
4 performance.

5 Q. Okay. And so this really leads to my next
6 question. I think this is really the fundamental
7 question in this case. I know the judge is
8 interested in this. [Parent] is as well.

9 Why did the team decide not to make an ESY
10 determination? Why did the team feel it was
11 necessary to wait until April 10th, 2014, to make
12 that determination?

13 A. It was necessary to gain the data and
14 information to support such a decision.

15 Q. Okay. And let's start out with some
16 comments that [Parent] had for you about winter
17 break. And I think you touched on this briefly, but
18 he raised the fact that, well, you testified that
19 you had collected winter break -- pre- and post-
20 winter break information; so that would have been
21 the Christmas, the holiday, Christmas holiday.

22 Can you tell us roughly, or can you tell
23 us -- actually I have a calendar here. (To [Parent])
24 I'm going to show the witness what has been labeled
25 as "Grants Pass School District No. 7 Calendar,"

1 school calendar for the 2013/2014 school year. And

2 I'll show that to you as well.

3 [PARENT]: Is this an Exhibit?

4 MR. COHN-LEE: No. I'm just going to use
5 it to refresh his recollection.

6 JUDGE HOUSE: As a matter of formality, he
7 can't hand something to the witness without showing
8 it to you first.

9 [PARENT]: Okay.

10 JUDGE HOUSE: So he's showing it to the
11 witness for reference.

12 MR. COHN-LEE: And I will put in the
13 record it's just to simply jog Mr. Kolb's memory so
14 we have specific dates set forth in the record
15 without him guessing.

16 [PARENT]: Fair enough.

17 MR. COHN-LEE: Judge, would you like to
18 look at this?

19 JUDGE HOUSE: No.

20 BY MR. COHN-LEE:

21 Q. Okay. Mr. Kolb, I'm going to hand you --
22 we're not marking this as an Exhibit, but it looks
23 like a 2013/2014 calendar.

24 Now, if you could, frame for the judge a
25 little bit some of our timelines in this case.

1 A. Sure.

2 Q. So you had an IEP meeting on November
3 20th, 2013; correct?

4 A. Correct.

5 Q. And then what was the first day of winter
6 break?

7 A. First day of winter break would have
8 started on Saturday, the 21st of December.

9 Q. Okay.

10 A. If you want to go technical school days
11 off, it would be Monday, December 23rd.

12 Q. Okay. And how many days were there before
13 winter break from the day when the team newly minted
14 the November 20th IEP?

15 A. According to this, it was 19 and a half
16 days of school scheduled.

17 Q. When you say "scheduled," what happened
18 during that period?

19 A. There were three days of which it froze
20 over. And it was pretty significant. Snow days
21 cancelled school District-wide.

22 Q. And on what days did those snow days
23 occur?

24 A. It occurred on Friday, December 6th, and
25 Monday, December 9th, and Tuesday, December 10th.

1 **Q. So actually there were four consecutive**
2 **calendar days of a break during that period?**

3 A. Correct. Also in there was a break of
4 four and a half calendar days for -- excuse me --
5 for Thanksgiving break.

6 **Q. Oh. Okay. Oh. Thank you. Yeah.**
7 **And when did the Thanksgiving break occur,**
8 **what days?**

9 A. About four days -- there were four school
10 days after the first day of implementation of the
11 new IEP.

12 **Q. Okay. And so total how many actual**
13 **instructional days were there during that period**
14 **from November 20th to the start of winter break?**

15 A. Sixteen and a half.

16 **Q. And how did this length of time play into**
17 **the team's decision about the -- I guess the**
18 **fidelity or the confidence it had in the pre-break**
19 **data it was collecting?**

20 A. The IEP changes were substantial. His a
21 pretty significantly impacted student. A lot of
22 strategies were changed.

23 So essentially we've got a lot of very new
24 things for [Student], new strategies, new tools.
25 That's a big adjustment for [Student].

1 So regarding the IEP being implemented,
2 had its challenges. Breaks in services compounded
3 that. And then -- but we did have data prior to
4 this break.

5 It was data based on very new
6 implementation, very unique, amazing kid with some
7 unique challenges. And so that adjustment period
8 for [Student] was particularly tough.

9 And so -- but we had data prior to and
10 then data following. I believe that's probably
11 something that would be called into question or
12 maybe brought up here and what that essentially
13 looked like at that time.

14 To my knowledge, this is the -- when we
15 did look at that data, it actually substantiated
16 that [Student] was able to recoup after the 16-day
17 break.

18 **Q. So able to recoup; so that would actually**
19 **in fact support a determination that [Student] did**
20 **not qualify?**

21 A. [Student] would not have qualified based
22 on my input or opinion of the data that I'm aware
23 of.

24 **Q. So in fact by waiting -- and the next**
25 **following break where the District could collect**

1 **that kind of recoupment and regression was what?**

2 A. Spring break.

3 **Q. On the calendar, when did spring break**
4 **occur?**

5 A. Spring break occurred -- the first day off
6 was technically March 21st. It was a
7 clerical/conference day. So March 21st was the first
8 day of seven, eight -- nine consecutive days, 10
9 consecutive days with no school.

10 **Q. So essentially what was the District**
11 **trying to do by -- it already had data. The data**
12 **perhaps suggested a determination of no services.**

13 **So what was the District trying to do by**
14 **waiting to gather additional data?**

15 A. Well, one, provide some additional. So
16 concerned a little bit of implementing a new IEP and
17 seeing -- we wanted more data to verify that our
18 winter data was accurate and/or disprove that data
19 that said no, now that we have -- things are in flow
20 and -- for the Student -- routines, practices,
21 strategies, that let's now take another look at
22 [Student's] ability to recoup skills and target
23 areas.

24 **Q. Would it be fair to say that the District**
25 **was holding out for additional data to see if**

1 [Student] could qualify for ESY services?

2 A. I would say that's a fair statement.

3 Q. And you touched on this briefly, but the
4 pre-winter break data, I think we've heard maybe
5 that referred to in the documents as the "baseline
6 data"?

7 A. Correct.

8 Q. Again, you indicated you had some concerns
9 and the team had some concerns about the fidelity or
10 the confidence in that baseline data, and you
11 identified a couple of factors such as the length of
12 time you had to implement that new IEP and the fact
13 that under this IEP you were actually changing some
14 instructional strategies that [Student] was not used
15 to.

16 Just again based on your general
17 knowledge, your knowledge of the documents, and
18 having worked with [Student] before, albeit briefly,
19 did [Student] struggle and have challenges with re-
20 establishing new routines or breaking from already
21 established routines?

22 A. Yes. [Student] struggles greatly with
23 change in routines, change in staff, change in even
24 the presentation of materials set in front of
25 [Student].

1 If he's used to a certain way of that
2 being done, he's really going to struggle with
3 understanding or processing what the expectations
4 are for [Student]. So oftentimes that could result
5 in just resistant behavior.

6 **THE REPORTER:** Is now a good time for a
7 break?

8 **JUDGE HOUSE:** I was thinking that also.

9 **MR. COHN-LEE:** Sure.

10 **JUDGE HOUSE:** It's 2:45. Can we go ahead
11 and take a 15-minute break?

12 **MR. COHN-LEE:** Of course.

13 **(A recess was taken from 2:45 p.m. to 3:04**
14 **p.m.)**

15 **JUDGE HOUSE:** We just had a rescheduling
16 issue.

17 There's an imminent need for the Parent to
18 leave to take care of an issue with the Student and
19 for health reasons. And at 4:30 we're going to stop
20 for the day. We will reconvene at 8:30 tomorrow
21 morning.

22 All right. Now we're going to continue
23 with direct examination from Mr. Kolb.

24 **BY MR. COHN-LEE:**

25 **Q. And, Mr. Kolb, where we last left off was**

1 talking a little bit about the data fidelity for the
2 winter break and how the team had made a decision to
3 get additional data, kind of err on the side of
4 caution, gather additional data after spring break.

5 But even before then, take a look at
6 Exhibit D-5.

7 And what is D-5?

8 A. D-5 are the meeting notes from the March
9 18th, 2014, meeting.

10 Q. And in fact there was an IEP meeting
11 convened on March 18th; correct?

12 A. That is correct.

13 Q. And you discussed that meeting a bit with
14 [Parent] during your dialogue with [Parent]?

15 A. Correct.

16 MR. COHN-LEE: I'd offer Exhibit D-5.

17 JUDGE HOUSE: Any objections, [Parent]?

18 [PARENT]: No objections.

19 JUDGE HOUSE: Okay. D-5 is admitted.

20 (Whereupon, District's Exhibit D-5 was
21 offered and admitted into evidence.)

22 BY MR. COHN-LEE:

23 Q. And again, why was the March 18th, 2014,
24 meeting convened?

25 A. That meeting was convened to review the

1 independent education evaluation for functional
2 behavior assessment to inform the development of
3 behavior for the future planning for [Student].

4 Additionally, the Parent wanted to discuss
5 I believe it was transitioning to the high school,
6 and additionally the Parent had requested that ESY
7 consideration be on the agenda.

8 **Q. Okay. And did the District honor the**
9 **request for the Parent to include ESY on the meeting**
10 **agenda?**

11 A. Yes, we did.

12 **Q. Okay. And in fact did you discuss ESY at**
13 **the March meeting?**

14 A. Yes, we did.

15 **Q. What was the substance of the discussion?**

16 A. The substance of the discussion was the
17 Parent wanted ESY determination to be made at that
18 meeting.

19 At which time the District still
20 disagreed, stating the need for additional
21 regression/recoupment data, which would be afforded
22 by the upcoming spring break.

23 **Q. Okay. And during that colloquy, did the**
24 **Parent have an opportunity to provide input?**

25 A. Yes.

1 **JUDGE HOUSE:** Since we've discussed this
2 twice, I'm going to ask a question.

3 What was the Parent saying about the
4 Student's specific need for a break no longer than
5 10 consecutive school days?

6 **THE WITNESS:** At this meeting?

7 **JUDGE HOUSE:** In general.

8 **THE WITNESS:** In general, the Parent
9 claims that -- and as documented in the Hawaii IEP,
10 Student needs ESY services for breaks longer than 10
11 days.

12 **JUDGE HOUSE:** Why?

13 **THE WITNESS:** That was never afforded to
14 to us.

15 **JUDGE HOUSE:** In no way was it referenced
16 at all --

17 **THE WITNESS:** In general --

18 **JUDGE HOUSE:** Sorry. I should have just
19 asked this a little bit better.

20 Did the Parent say it was regarding a
21 specific issue, more than one issue, or no issue?
22 Just I want ESY. So I just asked it in three forms,
23 but if you can, answer.

24 **THE WITNESS:** I believe I can attempt to.

25 Much of that, the premise for the Parent's

1 request for ESY is the ability to pair with adults,
2 relationships which would -- may reduce the number
3 of protests, whether they're physical or verbal,
4 whether they're eloping, flopping, pinching or
5 verbal protests -- for transitioning to nonpreferred
6 or engaging in nonpreferred activities.

7 JUDGE HOUSE: Okay.

8 MR. COHN-LEE: And, Judge, were you done
9 with your inquiry?

10 JUDGE HOUSE: Yes, thank you.

11 MR. COHN-LEE: Of course. I just wanted
12 to ask a follow-up on that precise issue.

13 Q. And you had indicated however that
14 regarding the documentation you received in the
15 Student's records that you received from either the
16 Parent or Hawaii, Kailua School District, it did not
17 contain data to actually explain or support that
18 conclusion?

19 A. Correct. We have never received any data
20 as to why ESY was determined to be appropriate for
21 [Student].

22 Q. Okay. And I'm going to jump forward now.
23 You had an IEP meeting on April 10th;
24 correct?

25 A. Correct.

1 Q. And again, using the calendar we've shown
2 you before, approximately how many instructional
3 days did that meeting occur after the end of the
4 spring break?

5 A. That occurred five, six, seven, eight --
6 that was the ninth instructional day following the
7 spring break.

8 Q. Okay. And if you could take a look back
9 at Exhibit D-1.

10 A. (Witness complies.)

11 Q. And on page 1 of D-1, if you look under
12 the middle section entitled "Criteria For ESY
13 Services," the guidelines set forth, periods for
14 looking at recoupment for various breaks.

15 So for example under "2-A," it talks about
16 more than eight weeks, looking at eight-week
17 recoupment period after a summer break, more than
18 two to three weeks after a winter break, or more
19 than one to two weeks after spring break.

20 A. (No audible response.)

21 Q. Your meeting to consider ESY on April
22 10th, did that fall within the District guidelines
23 for that recoupment period?

24 A. It fell right in the middle of the one to
25 two weeks after spring break for instructional

1 recoupment.

2 Q. Okay. And long story short -- and I know
3 we're walking a line here between the substantive
4 decision and the timing issue, but following up on
5 Judge House's inquiry -- after reviewing the
6 information at the April 10th IEP meeting regarding
7 recoupment and regression -- let me ask you, was
8 data for both winter break and spring break reviewed
9 at that April 10th meeting?

10 A. Yes, it was.

11 Q. As a result of that meeting, was there any
12 evidence in your view that [Student] actually
13 suffered undue recoupment or regression if [Student]
14 did not receive services for a period of 10 -- well,
15 actually more than 10 calendar days?

16 A. No.

17 Q. And just to make sure again we're framing
18 our time periods for the judge so she has accurate
19 information, how many school days did [Student] not
20 receive services over winter break?

21 A. Sixteen consecutive days.

22 Q. So those were 16 calendar days?

23 A. Sixteen calendar days.

24 Q. What about over spring break?

25 A. Ten calendar days.

1 Q. Okay. Now, again, during that April 10th
2 meeting, did the Parent raise any position or
3 arguments at the April 10th meeting in support of
4 why [Student] would unduly regress or be unable to
5 recoup if [Student] went, you know, 10 or more --
6 more than 10 calendar days without services?

7 A. The Parent raised an issue of concern of
8 significant behavioral implications that [Student]
9 would not be able to recoup from.

10 Q. And the did the Parent reference any data
11 that you collected?

12 A. The Parent had paperwork in front of
13 [Parent] and reference data and held up a chart in
14 that meeting that was not afforded to the rest of
15 the team.

16 Q. When you say wasn't afforded, did the
17 District actually ask to see a copy of that
18 information?

19 A. Yes, we asked for a copy of that
20 information.

21 Q. And was that provided to the District by
22 the Parent?

23 A. No.

24 JUDGE HOUSE: I'm sorry, [Parent] held up
25 -- how did you describe it?

1 THE WITNESS: Um, charts.

2 JUDGE HOUSE: All right.

3 THE WITNESS: From what I recall, a graph
4 of sort.

5 BY MR. COHN-LEE:

6 Q. And again, did the District affirmatively
7 ask for that information?

8 A. Yes.

9 Q. And was it provided by the Parent?

10 A. No.

11 Q. Mr. Kolb, I want to shift gears, and I
12 apologize in advance because we're going to be
13 jumping around now a little bit. But I wanted to
14 touch on a couple of topics that [Parent] brought up
15 in [Parent's] examination of you.

16 If you could, take a look at -- have you
17 go back and -- (To Parent) [Parent], I'm sorry. I'm
18 going to have to have you look at -- it's okay.

19 I think I might be able to use the
20 District version of some of the documents you used
21 for my questions. So unless I absolutely have to get
22 something from you, I'll try to use my documents.
23 (To the witness) Before we do that, Mr. Kolb, I
24 wanted you to authenticate some documents for me.

25 A. Okay.

1 Q. Take a look at Exhibit D-6.

2 A. (Witness complies.)

3 Q. And what is D-6?

4 A. Prior notice of special education action
5 as related to the March 18th, 2014, meeting.

6 MR. COHN-LEE: Okay. I'd offer Exhibit D-
7 6.

8 JUDGE HOUSE: Any objections?

9 [PARENT]: No objection.

10 JUDGE HOUSE: It's admitted.

11 (Whereupon, District's Exhibit D-6 was
12 offered and admitted into evidence.)

13 BY MR. COHN-LEE:

14 Q. Take a look at Exhibit D-7.

15 A. (Witness complies.)

16 Q. And what's D-7?

17 A. Notice of the team meeting for the meeting
18 scheduled for April the 10th, 2014.

19 MR. COHN-LEE: I'd offer D-7.

20 JUDGE HOUSE: Objection?

21 [PARENT]: No objection.

22 JUDGE HOUSE: Admitted.

23 (Whereupon, District's Exhibit D-7 was
24 offered and admitted into evidence.)

25 BY MR. COHN-LEE:

1 Q. And what is Exhibit D-8?

2 A. D-8 is the agenda that was presented for
3 the April 10th, 2014, meeting.

4 Q. And there's a second page to D-8 with some
5 handwritten notations.

6 Do you recall who made those handwritten
7 notations?

8 A. Dorothy Jewell.

9 MR. COHN-LEE: Okay. I'd offer Exhibit D-
10 8.

11 JUDGE HOUSE: And if I could ask that date
12 again?

13 THE WITNESS: April 10th, 2014.

14 JUDGE HOUSE: [Parent], any objection?

15 [PARENT]: Yes. What does this have to do
16 with the questions posed as to -- I don't understand
17 how the stuff that happens on April 10th apply to
18 the questions at hand from November 20th and March
19 18th.

20 MR. COHN-LEE: If I may?

21 JUDGE HOUSE: Go ahead.

22 MR. COHN-LEE: Judge, they clearly relate.

23 One of the primary, probably the primary
24 issue -- now that we've had evidence that there was
25 essentially agreement that ESY determination did not

1 need to be made in November, the key question is
2 whether or not the District was reasonable in
3 waiting until April 10th to convene a meeting to
4 make an ESY determination.

5 And that is one of the central -- that's
6 probably the central issue in this case.

7 And documents reflecting that we did
8 conduct a meeting that was within our guidelines for
9 recoupment and regression data, and as we'll hear
10 from other witnesses discussing data that showed why
11 it was necessary and reasonable to wait given the
12 data that was collected over spring break, that is
13 the central theme and issue in this case.

14 **JUDGE HOUSE:** I'm going to sustain the
15 objection.

16 The IEP, to use the legal -- the phrase
17 used in case law as a "snapshot."

18 And we're looking at the sufficiency of
19 the ESY consideration of November 10th and March
20 18th, decisions made at that time, whether if there
21 is a procedural defect, then it resulted in a
22 substance to the defect that in some way impacted
23 FAPE.

24 **MR. COHN-LEE:** And, Judge, may I be heard
25 on that?

1 JUDGE HOUSE: Yes.

2 MR. COHN-LEE: Because we're talking about
3 the November IEP, I would refer the judge to -- this
4 is an exhibit that's already been admitted into
5 evidence. It's Exhibit D-3, page 21 of 28.

6 JUDGE HOUSE: Yes.

7 MR. COHN-LEE: If you look at page 21 of
8 28 on D-3. And it is true that at that time the
9 District did develop an IEP with goals and
10 objectives that was based on present levels at that
11 time.

12 But as the team -- obviously with -- I
13 would even take the position that with the Parent
14 agreement, as of that day, they did not need to
15 determine ESY.

16 And the team with the Parent objection
17 indicated on the bottom that it would be appropriate
18 to wait and to have ESY to be considered by no later
19 than April 16th.

20 So by definition, the IEP document itself
21 is creating a window of time.

22 And that window of time obviously is in
23 question, and that's in dispute in this case,
24 whether or not it was reasonable for the District to
25 wait until April 10th to make an ESY determination.

1 But I would submit that the IEP document
2 itself, the team at that particular moment in time,
3 at that snapshot on November 20th, made that
4 determination that it would need to wait to make an
5 ESY determination until that time.

6 So it is directly relevant.

7 **[PARENT]:** I would disagree. Mr. Cohn-
8 Lee, I think he's extending some things pretty far
9 when he says that the team made an agreement because
10 we've heard testimony that it wasn't a team
11 agreement, that it was a consensus of one.

12 Additionally, again, I fall back on the
13 fact that we're talking about procedural flaws in
14 November and procedural flaws in March. We're not
15 talking about whether or not they held a meeting and
16 what was the outcome of that meeting in April.

17 **MR. COHN-LEE:** And I'm not taking the
18 position that the outcome is at issue. The outcome
19 is at issue in our second due process.

20 But again, the only issue for hearing
21 today is whether or not the IEP team, the District,
22 unreasonably delayed an ESY determination.

23 And it is going to be directly relevant to
24 have information in the record showing that there
25 was data gathered that demonstrated that the winter

1 break data was in fact suspect, that the data that
2 was collected later did not actually reinforce that
3 data.

4 So the decision to wait until after spring
5 break instead of making a decision right after
6 winter break, it was in fact reasonable and
7 necessary given the quality of the data that the
8 District collected.

9 So it is directly germane, not to the
10 substantive outcome, but to the timing.

11 And in terms of [Parent's] comment about a
12 comment of only Mr. Kolb -- first of all, he did not
13 say that, and we are going to have testimony from
14 other witnesses who are actually going to
15 corroborate that in fact that was a team discussion,
16 that was a team decision.

17 So at a minimum I think we should at least
18 wait until those witnesses can discuss these
19 documents and address some of information in these
20 documents.

21 **[PARENT]:** Unreasonable delay is not at
22 issue here. What's at issue is procedural failures.
23 Now, whether they unreasonably delayed -- you kind
24 of threw that out in the beginning of the motions.

25 **JUDGE HOUSE:** Mr. Cohn-Lee, what happened

1 at the meeting of April 10th is not relevant to
2 whether or not at the time the decision was made to
3 postpone a determination on ESY in some way if that
4 was a procedural defect, if, did it result in some
5 substantive impact on the ability of the Student to
6 access education.

7 And the Parent -- I understand that the
8 Parent is arguing that ESY determination needed to
9 be made in a time, and I'm not going to say what
10 else. But there's a timing issue, and there's a
11 reason that the timing had to be sooner than it was.

12 So what happened on April 16th, I have not
13 heard that the Parent agreed on that timing. And if
14 he did, we wouldn't be here.

15 So what happened as far as this IEP, the
16 IEP that eventually resulted -- I'm sorry. Now I'm
17 going to get the dates wrong -- the April IEP.

18 What happened at that IEP meeting isn't
19 going to affect whether the Parent meets the burden
20 of proof on those first two issues. The Parent's
21 due process request referenced a November 20th IEP
22 as amended in March 18th.

23 And so the burden is to show that those,
24 and specifically ESY consideration or not, at that
25 time substantively impacted the Student in some way

1 or created a substantively deficient IEP.

2 Parent hasn't had the opportunity to argue
3 that. I'm not going to pre-argue it. I don't know
4 exactly what he's going to say. But it's not based
5 on what happened at this meeting.

6 So no, I'm going to exclude the documents
7 that refer to the April IEP meeting.

8 **MR. COHN-LEE:** And just so I'm clear on
9 the record, so we are excluding Exhibit D-8 forward?

10 **[PARENT]:** If they're all referencing what
11 happened -- all right. Rather than make a broad
12 exclusion, I'm going to reserve ruling.

13 **MR. COHN-LEE:** Okay.

14 **JUDGE HOUSE:** Because that's the tendency
15 in this type of hearing is to let me look at it.
16 But that is what I'm going to be looking at, is
17 whether or not the first two IEPs fit what's at
18 issue and how did that affect the Student.

19 However or whatever happened at that next
20 meeting, as you said, is not in issue or has been
21 appealed.

22 **MR. COHN-LEE:** But I'm assuming that the
23 District can still argue that it decided not to make
24 -- if we're thinking about it as a timeline, it
25 decided not to make a decision on November 20th --

1 JUDGE HOUSE: Right --

2 MR. COHN-LEE: -- or March because at that
3 point in time it had not yet reached a point where
4 it had gotten sufficient data -- I'm assuming that's
5 still --

6 JUDGE HOUSE: That's great.

7 MR. COHN-LEE: Okay. And the other point
8 I'm making is actually when you look at some of
9 these documents, including D-10, it actually does
10 include data from the winter break period.

11 JUDGE HOUSE: That --

12 MR. COHN-LEE: So it's commingled. So I
13 think we're probably going to have to look at the
14 exhibits, you know, piece by piece.

15 JUDGE HOUSE: To the extent that they will
16 be interpreted or related to that issue, I
17 understand that, yes.

18 MR. COHN-LEE: Okay.

19 JUDGE HOUSE: That it shows data that
20 you're relying upon to support the position that you
21 took at that time, District took at that time, and
22 I'll look at it that way.

23 MR. COHN-LEE: Okay.

24 JUDGE HOUSE: May be the only place I see
25 that data. But it's just the determination and

1 outcome of the April meeting is not at issue.

2 **MR. COHN-LEE:** Okay. So we're holding off
3 on those. And we can address those with the
4 individual witnesses when we get to those.

5 **JUDGE HOUSE:** Okay. I think Exhibit D-8
6 is just an agenda, and it doesn't -- it shows
7 prevent regression and recoupment data; so it means
8 that they had it.

9 **MR. COHN-LEE:** Yeah.

10 **JUDGE HOUSE:** Just for what it's worth,
11 I'll allow it.

12 **MR. COHN-LEE:** Okay.

13 **JUDGE HOUSE:** It's admitted. I understand
14 Parent's objection, and I'll take that into account.

15 **(Whereupon, District's Exhibit D-8 was**
16 **offered and admitted into evidence.)**

17 **MR. COHN-LEE:** Okay.

18 **Q. And Mr. Kolb, what is Exhibit D-9?**

19 A. Exhibit D-9 would be the amended IEP as a
20 result of the meeting on April 10th, 2014. And the
21 substance of change on the IEP is that a decision
22 was made regarding eligibility for the ESY services.

23 **MR. COHN-LEE:** Okay. And just to the
24 extent that the document is being introduced to show
25 that a decision was made on that date, for

1 completeness of the record, we'd introduce D-9 for
2 that limited purpose, not necessarily to get into --

3 **JUDGE HOUSE:** What the decision was?

4 **MR. COHN-LEE:** Correct, but simply that a
5 meeting was convened on that date and a decision --
6 ESY was addressed on that date.

7 **JUDGE HOUSE:** Well, let me ask, you said
8 that there's data in here that was preexisting this
9 date that the District was already looking at?

10 **MR. COHN-LEE:** I'm not sure if there's
11 actually the raw data. The raw data, the data the
12 team considered, is actually D-10.

13 **JUDGE HOUSE:** All right.

14 **MR. COHN-LEE:** I just want to introduce D-
15 9 as a just placeholder to show in fact that's when
16 the meeting was convened and a decision was made
17 without getting into the substance.

18 **JUDGE HOUSE:** Okay. It's admitted for
19 that limited purpose.

20 **(Whereupon, District's Exhibit D-9 was**
21 **offered and admitted into evidence.)**

22 **MR. COHN-LEE:** And again, D-10 is the
23 underlying data, but it does include the data from
24 not only spring break, but the winter break.

25 So we can certainly focus in on the winter

1 break data. And I'd appreciate your guidance when
2 we get to that point.

3 I'd offer D-10 at this time.

4 **JUDGE HOUSE:** Okay. And [Parent], when
5 I've addressed the objection I think you would have
6 to D-10 also, do you understand what I'm looking at
7 it for, or what the District's offering it for and
8 why I think right now unless you tell me otherwise I
9 think it is relevant?

10 **[PARENT]:** Yes, I understand.

11 **JUDGE HOUSE:** All right. And just for
12 purposes of the record, do you still object to it?
13 You can.

14 **[PARENT]:** No.

15 **JUDGE HOUSE:** All right. So D-10 is
16 admitted.

17 **(Whereupon, District's Exhibit D-10 was**
18 **offered and admitted into evidence.)**

19 **BY MR. COHN-LEE:**

20 **Q.** And Mr. Kolb, what is D-11?

21 **A.** D-11 is --

22 **[PARENT]:** I'm sorry. I had another
23 question.

24 **JUDGE HOUSE:** Yes.

25 **[PARENT]:** So I may change my objection if

1 Mr. Kolb is the one that's verifying its
2 authenticity.

3 Or is it just being admitted, or is Mr.
4 Kolb verifying its authenticity?

5 **JUDGE HOUSE:** I think if he's saying
6 that's what it is, it's the IEP from that date.

7 **[PARENT]:** No. On D-11 -- or D-10. D-10
8 is data. D-10 is all raw data?

9 **MR. COHN-LEE:** Correct. But I think I can
10 lay a foundation and that this witness can
11 authenticate that as a special education director.

12 **JUDGE HOUSE:** Okay.

13 **BY MR. COHN-LEE:**

14 **Q. Mr. Kolb, are you familiar with the**
15 **education records in this file, and in fact was this**
16 **document generated and made part of the Student's**
17 **file?**

18 **A. Yes.**

19 **Q. And are you familiar with this document?**

20 **A. Yes.**

21 **MR. COHN-LEE:** I would offer the Exhibit.

22 **JUDGE HOUSE:** Do you maintain your
23 objection?

24 **[PARENT]:** I would state that he had
25 nothing to do with the creation of the data nor

1 would he have validated to determine whether the
2 data was correct prior to the --

3 **JUDGE HOUSE:** That's not the purpose. Let
4 me just explain that.

5 When a foundation is laid for admission as
6 a business record, someone can say basically "This
7 is a record that we keep in the normal course of
8 business. I look at these records as part of my
9 job. I look at this. This is what it appears to
10 be."

11 **[PARENT]:** Okay. I withdraw my objection.

12 **JUDGE HOUSE:** It's not as to whether or
13 not you agree with the data.

14 **[PARENT]:** Okay. I withdraw my objection.

15 **JUDGE HOUSE:** Okay. So it's admitted.

16 **(Whereupon, District's Exhibit D-11 was**
17 **offered and admitted into evidence.)**

18 **BY MR. COHN-LEE:**

19 **Q. What is D-11, Mr. Kolb?**

20 **A.** D-11 are the meeting minute or notes from
21 the April 10th, 2014, meeting.

22 **MR. COHN-LEE:** Okay. And again, strictly
23 for the limited purpose of reflecting that the
24 meeting occurred but also that the prior data was in
25 fact reviewed and considered, including the winter

1 break data, I would simply offer this to reflect
2 that.

3 **JUDGE HOUSE:** [Parent], with that
4 limitation, do you have an objection to D-11?

5 **[PARENT]:** Not with that limitation, no.

6 **JUDGE HOUSE:** All right. It's admitted
7 for that purpose.

8 **BY MR. COHN-LEE:**

9 **Q. And, Mr. Kolb, what is D-12?**

10 **A.** D-12 is a prior notice of special
11 education action form to follow up the meeting from
12 April 10th, 2014.

13 **MR. COHN-LEE:** And again, just to simply
14 reflect that the meeting occurred and that a
15 decision was made, we would offer at this time.

16 **JUDGE HOUSE:** [Parent]?

17 **[PARENT]:** No objection to that exhibit.

18 **JUDGE HOUSE:** All right. It's admitted.

19 **(Whereupon, District's Exhibit D-12 was**
20 **offered and admitted into evidence.)**

21 **BY MR. COHN-LEE:**

22 **Q. Mr. Kolb, I want to shift gears now. Like**
23 **I said, I'm going to apologize in advance because**
24 **we're going to hop around a little bit. So I'm**
25 **going to have you bounce around a little bit.**

1 You were shown Parent's Exhibit S-4 on
2 page 1. And I think that's the same thing as Exhibit
3 D-1. And so if you turn to Exhibit D-1, if you
4 could, take a look at page 4 of 5 of D-1.

5 And you were asked some questions about
6 whether and how the ODE cut-and-paste guidance you
7 inserted on here made reference to the IEP goals and
8 objectives and tracking goals and objectives for
9 purposes of ESY.

10 And you had mentioned a couple of provisions in
11 here: Subsection 4 and I believe Subsection 7 as
12 well, sub (B).

13 Take a look at subsection 6?

14 A. Okay.

15 Q. What does the "Recoupment and Regression
16 Standards" refer to?

17 A. "Regression" is the loss of skills or
18 behaviors in an area specified on the IEP. And
19 "recoupment" is recovery of skills or behavior
20 specified on the IEP.

21 Q. And [Parent] had you walk through a bunch
22 of regulations and the CFRs, is the Code of Federal
23 Regulations, on Exhibit S-2, page 1 of 1.

24 And he referred you to 300.106, Sub (2) --
25 actually (A), Sub (2), "Extended school year

1 services must be provided only if a child's IEP
2 determines on an individual basis in accordance with
3 Subsections 300.320 through 300.324 that the
4 services are necessary for the provision of FAPE to
5 the child." Okay.

6 Then [Parent] had you look at another set
7 of CFRs, Code of Federal Regulations and,
8 specifically, 300.320.

9 And this subsection, which is incorporated
10 in the other section we looked at, talks about the
11 components of the IEP.

12 And under the "Components," it lists various
13 things: "alternative assessments" -- what are
14 "alternative assessments"?

15 A. "Alternative assessments" would be
16 alternative to the standardized assessments utilized
17 to assess the progress of all students adopted by
18 the State of Oregon.

19 For State of Oregon, it's OAKS -- Oregon
20 Assessment of Knowledge and Skills -- to determine
21 progress as compared to other students at that grade
22 level.

23 Q. Okay.

24 JUDGE HOUSE: Just from prior knowledge, I
25 know that "OAKS" is an acronym. Can you tell me

1 what it stands for?

2 **THE WITNESS:** "Oregon Assessment of
3 Knowledge and Skills."

4 **JUDGE HOUSE:** Thank you.

5 **BY MR. COHN-LEE:**

6 **Q.** And as part of this list of components of
7 the IEP, it does list the IEP would include "a
8 statement of measurable annual goals" -- this is in
9 the Subsection (2)(i), lower case "i" -- "a
10 statement of measurable annual goals, including
11 academic and functional goals, designed to" --
12 Subsection A -- "meet the child's needs that result
13 from the child's disability to enable the child to
14 be involved in and make progress in the general ed
15 curriculum and meet each of the child's other
16 educational needs that result from the child's
17 disability."

18 **Having heard that, in your view, really**
19 **what are the function of the goals and objectives in**
20 **the IEP?**

21 **A.** The function of the goals and objectives
22 in the IEP are the comprehensive effort to identify
23 students' needs as related to the identified goal
24 areas as -- in order for the student to receive
25 FAPE.

1 Q. In your opinion, more than any other
2 section of an IEP -- present level state
3 assessments, nonparticipation justification, that
4 sort of thing -- do the goals and objectives really
5 define the educational needs of the student?

6 A. Yes.

7 Q. Okay. Do those goals and objectives
8 instruct the team about what skill areas that are
9 necessary in order for an IEP to deliver a FAPE?

10 A. Yes.

11 JUDGE HOUSE: I wanted to make sure I
12 heard the question two questions back.

13 Do you think the goals and objectives
14 define did you say the "educational needs of the
15 student"?

16 MR. COHN-LEE: Correct.

17 Q. And as a related question from what Judge
18 House said, those are needs that a school district
19 would be obligated to provide the student as part of
20 FAPE?

21 A. Correct.

22 Q. Bear with me, Mr. Kolb. I'm jumping
23 through my notes now; so we're going to hop around
24 subject-wise.

25 A. Okay.

1 Q. Okay. And again, you were shown Exhibit
2 S-4 at 1, and I'm going to refer you back to the
3 District's Exhibit D-1 at 4. So Exhibit D-1, page
4 4.

5 A. Okay.

6 Q. And in particular you were shown in the
7 middle of that page, Subsection 5, "School districts
8 must develop criteria for determining the need for
9 extended school year services. Criteria must
10 include regression and recoupment time based on
11 documented evidence or, if no documented evidence,
12 on predictions according to the professional
13 judgment of the team."

14 How do you interpret that provision?

15 A. I interpret that as we need data, and if
16 we can't get data, then we would move to predictions
17 according to the professional judgment of the team.

18 Q. In your opinion, however, as in this case,
19 if a team can reasonably defer making a decision in
20 order to gain that data, would it be obligated to
21 obtain that recoupment and regression data?

22 A. Yes.

23 Q. Paint us a picture. What types of
24 scenarios would there be in your view when a team
25 could not obtain that kind of data?

1 A. It would be very rare. It would be
2 potentially a student who was initially identified
3 at the very end of the school year where there
4 wasn't a break in service where we could have gotten
5 pre- and post-data for a period of time off.

6 Q. So for example if a student was just made
7 eligible for special education services and had an
8 IEP developed after the spring break in May for
9 example --

10 A. Correct --

11 Q. -- would that be one scenario where that
12 would apply --

13 A. That would be one scenario where that
14 would apply.

15 Q. But to be clear, if in your view the team
16 could engage in a process to obtain that data, in
17 your view would it be prudent and required for the
18 team to obtain data?

19 A. Yes, ensuring it's timely in order to
20 provide services appropriately.

21 Q. Let's go back to the original November
22 IEP. We were talking about this earlier in my
23 discussion with Judge House. Take a look at D-3.
24 Take a look at page 21 of D-3.

25 And now, before we even begin, the IEP

1 forms that the Grants Pass School District uses, are
2 they in fact patterned after the model forms
3 developed by the Department of Education?

4 A. Yeah. We're required to use forms that
5 have been approved by the Oregon Department of
6 Education.

7 Q. And you were asked some questions by
8 [Parent] about whether or not it was possible for a
9 team to make a decision regarding ESY at the time an
10 IEP was developed.

11 On the bottom of this page, on page 21, in
12 fact how many options are there regarding extended
13 school year?

14 A. There are three options: either yes, ESY
15 services will be provided; no, they will not; or "to
16 be considered" with a blank spot in which we would
17 be obligated to insert the date.

18 Q. And so on this form that tracks the ODE
19 model forms and rules, the IEP in fact does provide
20 and recognize that in fact there is another
21 alternative option for a team to consider, which is
22 to wait and defer beyond the date when an IEP is
23 drafted when it will consider ESY services?

24 A. Correct.

25 Q. And it's your understanding that that is

1 consistent with Oregon regulations and federal law?

2 A. Yes.

3 Q. I may have already touched on this, and if
4 so, people can chime in and let me know.

5 But I think there was a colloquy with
6 [Parent] or Judge House about District maybe having
7 some selected documents from [Student's] prior
8 school district, the Kailua School District.

9 I think you mentioned that we had the
10 prior IEP. I just wanted to be clear though.

11 What was the quality of the information in
12 the documents you had regarding actual ESY data?

13 A. It was only a statement that the Student
14 would receive ESY, a description of what that
15 Student would receive, but no foundational
16 statements or data to support the decision for the
17 ESY.

18 JUDGE HOUSE: Mr. Cohn-Lee, I've got a
19 question that's in mind because you asked what
20 you're understanding Mr. Kolb has said of the
21 requirements.

22 From the Parent's requests for ESY, was
23 there an indication that the request for ESY was
24 based on something that may have been a related
25 service, related to behavior, related to something

1 other than the specific educational goal or goals or
2 objectives, but more towards ESY designed to
3 maintain the Student's ability to access education,
4 in other words, impacting behavior?

5 **MR. COHN-LEE:** And, Judge, I just want to
6 be clear, I actually -- I don't know if you were
7 looking at another document.

8 I actually asked Mr. Kolb a follow-up
9 question as to whether or not it would be any goal
10 areas that would be considered necessary to provide
11 FAPE.

12 So that would be -- I did not say the term
13 "academic." I meant any goal area. That could
14 include behaviors that were necessary for the child
15 to access their education.

16 **JUDGE HOUSE:** And I think what I'm asking
17 directly is: Was that a concern expressed by the
18 Parent?

19 **THE WITNESS:** Yes.

20 **JUDGE HOUSE:** Was there anything in the
21 IEP from the previous year that said, if not the
22 data, what was to be provided to address the
23 Student's ability to access education?

24 In other words, if not just the goal of
25 some rote task nine or 10 times, but the area of

1 behavior, the area of the Student's ability to
2 interact with another person -- was that addressed
3 in the IEP services?

4 **THE WITNESS:** Yes, as well as in the
5 Present Levels of Performance.

6 **JUDGE HOUSE:** Was there data in there that
7 could have been discussed in November to address
8 Parent's concern about the timing of the ESY
9 decision?

10 **THE WITNESS:** There was data in there that
11 was relevant to discussion of [Student's] overall
12 educational program and planning, whether it's
13 behavioral, social, emotional, academic.

14 So we don't by any means discard the
15 content of the PLEP from Hawaii.

16 **JUDGE HOUSE:** And what did the team, if
17 you will, do with that discussion in November?
18 Where was it discussed that the Student had been
19 determined to have ESY because at some point
20 something was needed for that student to access
21 education? Was that discussion held in November?

22 **THE WITNESS:** That part of the ESY
23 discussion was not held.

24 What was held was making a determination
25 in the new IEP based on what [Student's] new team --

1 [Student's] new team's knowledge, [Student's] new
2 team's experiences, [Student's] goals and objectives
3 and identified needs based on -- based on our
4 District moving forward and our experts in the areas
5 of behavior and autism communication.

6 **JUDGE HOUSE:** And did those individuals
7 discuss the behavioral needs of the student to be
8 part of the ESY decision and discussion at a later
9 time?

10 In other words, were they saying, "We are
11 considering those things. We're going to determine
12 that later"?

13 **THE WITNESS:** The Student's goals and
14 objectives were built around all of those pieces --
15 behavior and communication and academic.

16 And development of those goals and
17 monitoring the progress of those goals would inform
18 that determination at a later point in time.

19 **JUDGE HOUSE:** Okay. Thank you for bearing
20 with me.

21 **MR. COHN-LEE:** And actually I think that's
22 a really good question. I wanted to follow up.

23 **Q. Just to be clear, as of November 20th,**
24 **2013, the IEP team had served [Student] for a couple**
25 **of months?**

1 A. Correct.

2 Q. They had data directly from their time
3 serving [Student] directly; and so Grants Pass
4 School District staff had their own data to draft a
5 new IEP?

6 A. Correct.

7 Q. And that was drafted. And in fact those
8 goals were substantially different from the goals in
9 the Hawaii IEP?

10 A. Correct.

11 Q. So just to be clear, to use the data from
12 the Hawaii IEP, was that apples to oranges, or would
13 that have been something that would correlate at
14 all?

15 A. They would not correlate based on how the
16 goals were written and the target skills, many of
17 the goals.

18 Q. Mr. Kolb, I think that's all I have for
19 you.

20 A. Okay.

21 JUDGE HOUSE: And, [Parent], do you have
22 any further questions at this time for Mr. Kolb?

23 [PARENT]: Yes, I do. Give me just a
24 second, please.

25 REDIRECT EXAMINATION

1 BY [PARENT]:

2 Q. You stated that the goals and objectives
3 define educational needs.

4 Do you stand by that statement?

5 A. Yes.

6 Q. Do you feel that the PLEP drives the goals
7 and objectives?

8 A. Yes.

9 Q. So would it then be the PLEP that drives -
10 - defines the educational needs and not the goals
11 and objectives?

12 A. I believe they go together hand in hand.

13 Q. You stated earlier -- and correct me if
14 I'm misquoting you because I'm not as fast as the
15 stenographer -- "[Student] struggles with routine
16 and changes."

17 Does that sound familiar?

18 A. Yes.

19 Q. Would this not apply to the need for ESY?

20 A. It directly applies to the need for ESY.

21 Q. You -- not you, but it was discussed that
22 there was only 16.5 days when the new IEP was
23 developed until the winter break began.

24 And a lot of emphasis was put on the fact
25 that the new IEP was black-and-white different from

1 the old Hawaii IEP. The goals and objectives were
2 dramatically different.

3 Was that I reasonable statement? Would
4 you agree with that?

5 A. I believe my statement was along the lines
6 of it's substantially different.

7 Q. Okay. In the event that everything was
8 substantially different, wouldn't that have provided
9 for lower baselines when looking at -- you know,
10 lower baseline scores when looking at the scores
11 from that period when you're trying to determine a
12 baseline?

13 If [Student] struggles with the changes
14 and everything is now different, a baseline
15 generated from prior to winter break -- one could
16 presume that it would be lower?

17 A. I was not there to implement; so I can't
18 comment to that relative to [Student] and the
19 implementation of the IEP.

20 Q. You said something to the effect that your
21 goal or the goal -- and with some students do not
22 stay static, that they're -- do you recall this
23 conversation?

24 A. I recall Mr. Cohn-Lee asking me if --

25 Q. They're always changing and they don't

1 **stay static?**

2 A. I recall that.

3 **Q. Okay. Would you agree that some problems**
4 **do in fact stay static or are ever-present**
5 **throughout a child's education?**

6 A. I believe that some areas of progress,
7 growth is much slower for some than others.

8 **[PARENT]:** Am I allowed to introduce
9 additional evidence at this time?

10 **JUDGE HOUSE:** What --

11 **[PARENT]:** Well, it would be on my stuff
12 that I said I was going to --

13 **JUDGE HOUSE:** Right. If you want to show
14 us something else --

15 **[PARENT]:** Offer an exhibit?

16 **JUDGE HOUSE:** You can if this witness
17 knows what it is and can -- you have to ask the
18 witness if he's seen it, if he knows anything about
19 it. If he's never seen it --

20 **[PARENT]:** Oh, okay. Okay. I will be
21 referencing S-16 I believe.

22 **JUDGE HOUSE:** So S-16 looks to be the --
23 it's three pages, "Confidential Information,
24 Functional Behavior Assessment and Behavior
25 Intervention Plan."

1 BY [PARENT]:

2 Q. Do you recognize this document?

3 A. Yes.

4 [PARENT]: And I'm sorry. What was the
5 other thing I was supposed to ask?

6 JUDGE HOUSE: It's just laying a
7 foundation so --

8 [PARENT]: Can I offer this?

9 JUDGE HOUSE: [Parent] wants to offer this
10 -- the what, the FBA?

11 [PARENT]: The Functional Behavioral
12 Assessment and Behavior Intervention Plan developed
13 -- well, this report was dated 10/30/13.

14 MR. COHN-LEE: I guess I'd have to defer
15 on that until I know what the purpose of the exhibit
16 is; for example, you know, how would it relate to
17 actual extended school year as opposed to just
18 general background information about the Student. I
19 just don't know.

20 [PARENT]: Well, it goes to the question
21 that I was just asking Mr. Kolb about related to his
22 staying static or had difficulties.

23 MR. COHN-LEE: I don't object if that's
24 the only question.

25 JUDGE HOUSE: I'm going to admit the

1 document for that purpose.

2 (Whereupon, Parent's Exhibit S-16 was
3 admitted into evidence.)

4 JUDGE HOUSE: Go ahead.

5 [PARENT]: On the first page under
6 "Behaviors of Concern," it's reflected that
7 "[Student] has a history of leaving school staff
8 supervision without permission. Previous and current
9 staff hypothesize that this occurs to escape task or
10 environment."

11 I only bring this up because it seems that
12 in this instance they are relying on historical data
13 from Hawaii. And then in the next paragraph --

14 MR. COHN-LEE: Well, I --

15 JUDGE HOUSE: Let me ask -- I'm sorry, Mr.
16 Cohn-Lee. I'm just going to ask the witness -- you
17 might have an additional objection. (To [Parent])
18 Could you ask the witness if that's what that was?

19 MR. COHN-LEE: That was my objection,
20 Judge.

21 BY [PARENT]:

22 Q. Well, when it says "Previous and current
23 staff hypothesize," who is that referring to?

24 JUDGE HOUSE: Can you answer that
25 question?

1 **THE WITNESS:** I can't. I didn't write
2 this report.

3 **BY [PARENT]:**

4 **Q.** If you had to make a conjecture, knowing
5 that [Student] had been in your school district for
6 three months at the time that this was written, when
7 you read "Previous and current staff hypothesize,"
8 who would you presume that this report is referring
9 to?

10 **MR. COHN-LEE:** And I would object that I
11 think [Parent's] question on its face calls for
12 speculation, for assumption or a guess.

13 **JUDGE HOUSE:** Given the witness's
14 background and his position as director of special
15 services, I would assume that he would know what
16 this was based on or would ask.

17 So I'm just going to ask you if you read this
18 and this is a document -- let me ask it this way:
19 Have you seen this type of a document? Is this
20 familiar?

21 **THE WITNESS:** Yes.

22 **JUDGE HOUSE:** And if you saw that
23 reference, would you assume that that means staff
24 other than the first three months?

25 **THE WITNESS:** Yes.

1 JUDGE HOUSE: Okay. And so might that be
2 staff in the previous district?

3 THE WITNESS: Yes, it might be.

4 JUDGE HOUSE: All right.

5 BY [PARENT]:

6 Q. And might that be referencing data from a
7 previous district?

8 MR. COHN-LEE: Well, I would --

9 JUDGE HOUSE: At that point I'm going to
10 sustain Mr. Cohn-Lee's objection. You're asking him
11 to infer or guess what the author meant.

12 [PARENT]: Okay.

13 JUDGE HOUSE: And I asked it in a general
14 way --

15 [PARENT]: Withdrawn.

16 JUDGE HOUSE: Okay. You need to ask the
17 person who created these documents. All right.

18 BY [PARENT]:

19 Q. "[Student] has a history of regression" --
20 in the next paragraph, it states, "[Student] has a
21 history of regression." And then in the second
22 sentence it goes on again to say "previous and
23 current staff."

24 Would you answer similarly to the first
25 question?

1 A. I would.

2 Q. And the same thing on the third paragraph
3 where it states, again, "[Student] has a history of
4 dropping on the floor" and "previous and current
5 staff hypothesize"?

6 A. I'd make a reasonable, educated assumption
7 that would include staff prior to [Student's] last
8 school district.

9 Q. So then when you stated earlier that you
10 did not expect to see Student stay static or carry
11 through problems and needs from year to year, would
12 you care to --

13 A. I didn't make that statement. The
14 questioning earlier was do some students stay
15 static, and my comments were some students make
16 minimal growth in progress areas.

17 Q. Reading this, would you presume that these
18 behaviors have been with [Student] longer than at
19 Grants Pass School District?

20 A. Absolutely.

21 Q. This report was created for what reason?
22 Do you know?

23 A. This one is a functional behavior
24 assessment as related to eligibility consider of --
25 part of our comprehensive evaluation for eligibility

1 in the State of Oregon.

2 **Q. And this report was reviewed by the IEP**
3 **team prior to the November 20th IEP meeting?**

4 A. This report was submitted as part of the
5 November 19th eligibility meeting.

6 **Q. Okay. So this report was available to the**
7 **IEP team November 20th?**

8 A. Correct.

9 **Q. Thank you. Do you recall me requesting an**
10 **ESY determination in the 11/20 meeting, IEP meeting?**

11 A. No.

12 **Q. So you don't recall at all that I wanted**
13 **to make an ESY determination?**

14 A. Are you asking for my recollection of the
15 meeting?

16 **Q. Yes.**

17 A. My recollection of the meeting is pretty
18 accurately stated in the meeting minutes which you
19 accepted and agreed that ESY did not need to be made
20 at that time.

21 **Q. That wasn't --**

22 A. And you disagreed --

23 **Q. That wasn't the question.**

24 **JUDGE HOUSE:** What I heard -- and let me
25 ask for clarification. What I heard you ask was:

1 Do you recall me asking prior to that meeting to
2 have ESY determination -- was it at the meeting or
3 talk about ESY?

4 **[PARENT]:** I actually asked: Do you
5 recall me requesting an ESY determination in the
6 meeting of 11/20? It's a yes-or-no question.

7 **JUDGE HOUSE:** Okay.

8 **THE WITNESS:** No.

9 **BY [PARENT]:**

10 **Q.** If I didn't request an ESY determination,
11 how did ESY get brought up?

12 **A.** It's in the Oregon IEP. We're obligated
13 to address it annually in the development of the
14 IEP. It was facilitated by Ms. Armbrust.

15 **Q.** In a response to the question Mr. Cohn-Lee
16 made to you, you stated, "The entire team concurred
17 on 11/20," including yourself, "to put off of an ESY
18 determination."

19 **Do you recall stating that?**

20 **A.** Yes.

21 **Q.** Yet you had previously stated to me that
22 you had made the consensus determination and that
23 maybe you could recall one additional person brought
24 up something but did not concur with anything; is
25 that correct?

1 **MR. COHN-LEE:** I'm going to object as to
2 vague and compound --

3 **[PARENT]:** Did you --

4 **THE REPORTER:** Okay. One at a time,
5 please.

6 **JUDGE HOUSE:** You're objecting to vague
7 and compound.

8 **MR. COHN-LEE:** Yes.

9 **JUDGE HOUSE:** I believe [Parent] is
10 recounting what he recalls an answer on direct
11 testimony was from this witness to him versus the
12 testimony in a similar question to you and that, to
13 [Parent], he had actually said it was -- (to
14 [Parent]) you -- (to Mr. Cohn-Lee) the Parent and he
15 who talked about it, there was maybe one other
16 person who mentioned it, they didn't agree, and he
17 as the District representative made the decision.
18 It was not a consensus.

19 And I think he's representing that the
20 testimony would say in the beginning on the record
21 it was not a consensus and, in his testimony to you,
22 he used the word "consensus" and affirmed that there
23 was consensus.

24 I noted that difference, but I'm not going
25 to say that I know that's true. I'd have to look at

1 the record.

2 **MR. COHN-LEE:** Again, just to be clear,
3 we're talking about the November 20th meeting?

4 **JUDGE HOUSE:** Yes, as to whether there was
5 consensus to defer the decision. And I believe the
6 answer to [Parent's] question was "No, there was
7 not." And then it was asked by you, it was "Yes,
8 there was."

9 **MR. COHN-LEE:** And the only reason I
10 raised the compound objection -- it may be that was
11 the right objection to raise.

12 But actually I believe what I talked about
13 was the section of the meeting notes where there was
14 an agreement about not needing to decide on November
15 20th, and then we talked about deciding to meet by
16 April 16th. And I think then we talked about
17 disagreement by the Parent.

18 So it's actually -- there are two layers
19 to that, and that was my question.

20 So I guess I would object as I don't think
21 that accurately states the testimony as well, but
22 certainly if [Parent] wants to reask it with that
23 clarification, I would not have any idea.

24 **JUDGE HOUSE:** Okay.

25 **[PARENT]:** I think the record will show

1 that --

2 **JUDGE HOUSE:** Okay.

3 **[PARENT]:** I don't need to go into it any
4 further because I think the record will bring to
5 light the answer to my question.

6 So I have no further questions for Mr.
7 Kolb. Thank you.

8 **JUDGE HOUSE:** Redirect?

9 **MR. COHN-LEE:** Very briefly.

10 **RECROSS-EXAMINATION**

11 **BY MR. COHN-LEE:**

12 **Q. Let's stay on -- do you still have that**
13 **16th -- S-16. If you want to stay on S-16.**

14 **And just as a general matter, do you**
15 **remember the purpose and kind of the genesis of why**
16 **this document was generated?**

17 **A. As part of a comprehensive assessment. A**
18 **student with significant behavioral challenges,**
19 **compelled to be comprehensive and develop a**
20 **functional behavior assessment looking at historical**
21 **information to inform behavior intervention plan**
22 **moving forward to strategies to utilize with this**
23 **student.**

24 **Q. And in your experience, is that type of**
25 **assessment information, is that germane or does that**

1 align with regression and recoupment data for ESY?

2 A. Behavior in and of itself would -- would
3 align with goals and objectives in the IEP, hence,
4 the evaluation in the area of behavior.

5 Q. And as of the date this report was
6 generated, 10/30/13, would the team have had any
7 opportunity to gauge any breaks in instruction to
8 generate recoupment and regression data?

9 A. No.

10 Q. Okay. In fact just to note, it says here
11 the "facilitator of this report."

12 Does that mean the person who drafted the
13 report?

14 A. Yes, drafted the report.

15 Q. And that's listed here as "Pamela
16 Schwerdt"?

17 A. Schwerdt.

18 Q. Okay. And was there a reason why Ms.
19 Schwerdt was being asked to draft this report?

20 A. Clearly [Student] needed behavior
21 intervention planning. Us wanting to contribute our
22 expert analysis of behavior, one of our experts on
23 behavior, wanting to inform the IEP presents levels
24 and hence informing the development of goals and
25 objectives for the upcoming eligibility in IEP

1 meetings.

2 Q. Okay. But not ESY?

3 A. Not ESY.

4 Q. And again, just to be clear, simply having
5 static information about a student's behavioral
6 needs, would that be relevant or germane to a
7 measurement of regression or recoupment?

8 A. Not necessarily. If a student is
9 demonstrating over a long period of time limited
10 growth in an area, we still want to take a look at
11 is it the result of a lack of -- or a break in
12 service that may cause a significant or undue
13 regression and an inability to recoup within a
14 reasonable period of time.

15 Q. So just as a hypothetical, let's say a
16 student is demonstrating on a behavioral goal
17 clearly below progress or even regression on a
18 behavioral goal, so not a strict academic goal, but
19 that regression or low progress occurs during a
20 period when the student is in school or receiving
21 instruction, so no breaks in instruction.

22 Would that data be meaningful at all for
23 an ESY determination?

24 A. Not ESY because it's not relevant to a
25 break in service.

1 When we're looking at an ESY, we want to
2 know is a break in service significantly impacting
3 the student.

4 If the student is receiving services the
5 entire time and regression is occurring potentially,
6 we've got a lot of things to look at in terms of
7 strategies and go back to our ongoing FBA work and
8 such to really take a look at it -- look at
9 medications and look at environmental factors and
10 the array of antecedents.

11 So -- but not relative to ESY.

12 **Q. You were similarly asked a question by**
13 **[Parent] about whether or not [Student] had problems**
14 **with change. You indicated I think in the**
15 **affirmative that [Student] did have.**

16 But again, related question: A student simply
17 having problems with change, how would that
18 necessarily be relevant to ESY and looking at breaks
19 in instruction?

20 A. Probably be talking to other witnesses who
21 can speak more expert to behavior and students who
22 are on the autism spectrum.

23 But as far as change, for students it's an
24 adjustment whether a student's going from one school
25 to another, from a new state to another. Might be a

1 totally upside down routine, new person.

2 But as far as regression and recoupment,
3 given a change, is a student able to re-engage into
4 routines and activities, is it the result of the
5 break, break in service is the question that needs
6 to be asked -- answered.

7 Q. Okay. Mr. Kolb, that's all I have for
8 you. Thank you.

9 JUDGE HOUSE: [Parent]?

10 [PARENT]: I just have one.

11 JUDGE HOUSE: All right.

12 RE-REDIRECT EXAMINATION

13 BY [PARENT]:

14 Q. Referring to Exhibit S-16, and to my S-4
15 --

16 MR. COHN-LEE: D-1 I think?

17 [PARENT]: What did we determine --

18 MR. COHN-LEE: It's all part of our D-1.

19 [PARENT]: In your D-1 under the OARs?

20 MR. COHN-LEE: Yeah. So D-1, and you're
21 looking at, yeah, page 4.

22 BY [PARENT]:

23 Q. Okay. So referring to the FBA and the BSP
24 and referring that information to the OARs, could
25 predictions be made utilizing this type of

1 information according to the professional judgment
2 of the educators and the team?

3 A. Could predictions be made?

4 MR. COHN-LEE: I'm going to object as to
5 the vagueness. "Could" theoretically or could they
6 have been --

7 JUDGE HOUSE: Sustained. I'm sorry. I
8 should have let you finish the objection.

9 The question asks for general speculation.
10 Could you be more specific?

11 BY [PARENT]:

12 Q. "Predictions according to the professional
13 judgment of the team are to be on" -- is this the
14 type of information, "predictions according to the
15 professional judgment of the team"?

16 MR. COHN-LEE: I'm so sorry.

17 [PARENT]: No, that's okay. I'm having
18 trouble phrasing it, and I'll retract, and let me
19 think about it for a second.

20 MR. COHN-LEE: Sure.

21 BY [PARENT]:

22 Q. If no data exists, what would predictions
23 be made on? The professional judgment of the team
24 is going to make predictions. If no data exists,
25 what would those predictions be based on?

1 **MR. COHN-LEE:** And I'm going to object as
2 to vague and speculative.

3 **[PARENT]:** And speculative?

4 **JUDGE HOUSE:** It's a hypothetical question
5 is what he's trying to ask. And I think I'm going
6 to allow it, but I'm going to try to get it a little
7 bit more clearly.

8 Are you asking if in the instance of a
9 student who has behavioral issues and a history of
10 behavioral issues, could an IEP decision be made
11 based on professional judgment of the team under
12 Section 5 to rule out ESY?

13 **[PARENT]:** Yes, that's what I'm pretty
14 much trying to say.

15 **JUDGE HOUSE:** It's a hypothetical, could
16 that happen.

17 **THE WITNESS:** Can you restate the entire
18 question for me. I heard it --

19 **BY [PARENT]:**

20 **Q. Is this not the type of data?**

21 **JUDGE HOUSE:** When you say "is this" -- I
22 think [Parent] is referring to the type of behavior
23 information that's in the FEA BIP.

24 Is that what you were referring to?

25 **[PARENT]:** Yes.

1 **JUDGE HOUSE:** Okay. Referring to that,
2 could the IEP make as provided under Section 5 a
3 prediction based on their professional judgment
4 about the Student's needs for ESY?

5 **MR. COHN-LEE:** Judge, just so I
6 understand, we're -- is [Parent] asking is the
7 specific information in this FBA, or is he asking --

8 **[PARENT]:** The specific --

9 **MR. COHN-LEE:** -- any potential FBA ever
10 made? That's what I'm --

11 **JUDGE HOUSE:** I believe he's asking if he
12 had this FBA (indicating) in the EIP, could a team
13 make professional judgment as to whether ESY was
14 needed or not.

15 **[PARENT]:** Could it be used as a basis?

16 **JUDGE HOUSE:** Can that be used as a basis
17 for the professional judgment?

18 **THE WITNESS:** I would not support that as
19 a special ed director to use this report as a basis
20 for ESY determination.

21 **JUDGE HOUSE:** All right.

22 **BY [PARENT]:**

23 **Q.** You would not -- is there instance where
24 you would as a special ed director support an ESY
25 determination with a lack of documented data?

1 A. Yes.

2 JUDGE HOUSE: That has been asked and
3 answered.

4 [PARENT]: Okay. Sorry. I'm done then.

5 JUDGE HOUSE: Okay. I'm going to assume
6 this witness will remain because he's here.

7 MR. COHN-LEE: He has to.

8 JUDGE HOUSE: And he'll be subject to
9 probably more questioning if needed. (To [Parent]) I
10 know that you needed to leave at 4:30. It's 4:17.
11 Is there anything that can be accomplished in 10
12 minutes?

13 [PARENT]: I can begin testifying, but I
14 actually have to use the restroom.

15 JUDGE HOUSE: Why don't we do that
16 tomorrow, and we'll start with you at 10:30 --
17 10:30. That would be nice. 8:30.

18 MR. HUNGERFORD: After talking to them, we
19 could begin even at 8:00. They open the doors at
20 7:45.

21 JUDGE HOUSE: I don't want to make it
22 impossible for everyone. Can we be here earlier?

23 THE REPORTER: Yes.

24 JUDGE HOUSE: 8:00. [PARENT]?

25 [PARENT]: I can do 8:00.

1 JUDGE HOUSE: Mr. Cohn-Lee?

2 MR. COHN-LEE: (No audible response.)

3 JUDGE HOUSE: The question will be the
4 ALJ. We will reconvene then at 8:00. It's 4:18.

5 Is there anything else I need to address
6 on the record?

7 MR. COHN-LEE: No, Judge.

8 JUDGE HOUSE: All right. Let's go ahead
9 and go off the record.

10 (The proceedings was adjourned for the day
11 at 4:18 p.m.)

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1 CERTIFICATE

2
3 I, Cecily A. Yates, certify that the foregoing
4 was repoted and reduced to written form; that the
5 prepared by me or under my direction, is a true and
6 record of same to the best of my knowledge and ability;
7 there is no relation nor employment by any attorney or
8 counsel employed by the parties hereto, nor financial or
9 otherwise interest in the action filed or outcome.

10
11 IN WITNESS HEREOF, I have hereunto set my hand
12 this 21st day of May, 2014.

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18 /S/ Cecily A. Yates
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0	61:12 61:17	14-102 4:12	199:19
015-2065	10th 23:24	15 22:19	200:20
49:24	24:3 24:7	79:23 99:22	204:22
1	143:13	15-minute	19 184:15
1 22:19 22:20	182:11	189:11	19th 6:16
22:23 22:24	184:25	16 147:16	162:9 233:5
22:24 28:13	193:23	195:22	2
44:22 58:15	194:22	16.5 225:22	2 28:13
80:17 103:8	195:6 195:9	16-day 186:16	43:5
103:8	196:1 196:3	16th 28:25	44:13 44:22
110:25	198:18	107:10	47:23
111:1 111:2	199:3	137:24	48:1 48:8
113:1	199:13	138:1 138:2	51:21
173:17	199:17	138:6 138:6	52:1 53:2
174:12	200:3	139:19	56:3
175:7	200:19	139:20	56:13
194:11	201:25	140:16	58:5 59:6
213:2	204:1	147:16	59:11 59:11
213:23	207:20	150:6	62:5 64:8
213:23	211:21	150:12	65:3 65:3
217:2	212:12	151:5 167:7	68:22
1:30 131:1	11/20 150:5	170:7	86:9
1:32 131:3	233:10	170:12	86:24
10 18:22 68:1	234:6	171:2	87:9
187:8 192:5	234:17	171:12	87:15 87:16
192:10	11/20/2013	201:19	87:20 87:23
195:14	100:8 102:4	204:12	88:4
195:15	105:7	236:16	94:25
196:5 196:6	11:17 80:3	237:13	95:1 95:3
221:25	12 22:21	18th 6:19 7:4	95:3 96:8
245:11	22:23 23:23	40:3 89:3	96:8 161:13
10/30/13	25:2 68:1	143:14	173:17
228:13	12:30	146:7	213:24
238:6	130:24	146:12	213:25
10:30	131:1 131:2	151:22	2) (i 215:9
245:16	13 4:3	151:24	2:45 189:10
245:17	13th 4:13	153:1 190:9	189:13
10:57 80:2	68:17	190:11	2003 13:25
106 57:25	14 148:19	190:23	2004 10:6
		198:5	

2011 66:25	2065 49:2	164:17	3:04 189:13
2013 6:19 7:4	20th 6:19 7:3	23rd 184:11	300.106
27:5	29:13 32:22	23th 127:7	57:3 58:1
28:25 29:14	40:3 89:3	24 104:9	58:4
40:3	109:17	107:3	58:25
41:18 41:20	119:6	115:14	59:6
42:8	125:24	164:17	59:12 61:13
67:12 67:14	126:14	27 102:4	213:24
67:15 67:17	127:19	102:21	300.320
68:10 89:25	137:16	103:9	59:8
126:19	137:19	103:17	59:16 59:21
160:2	137:22	104:7	60:19 214:3
160:14	150:21	27th 160:2	214:8
160:24	161:11	28 102:4	300.324 59:16
161:11	161:22	102:21	59:22 60:20
161:22	164:14	103:9	61:11 61:19
164:14	164:25	103:10	62:3
177:8	170:6 181:3	103:17	64:19 214:3
177:24	184:3	104:7 201:5	31st 146:11
180:9 181:3	184:14	201:8	320 60:9
184:3	185:14	2-A 194:15	324 59:9 60:9
223:24	199:18	<hr/>	61:13 61:14
2013/2014	202:3	3	61:16
183:1	204:21	3 58:15	35 155:18
183:23	205:25	<hr/>	<hr/>
2014 4:3 5:22	223:23	69:3	4
6:2 6:16	233:3 233:7	69:14 69:15	4 43:16 48:16
6:19 7:4	236:3	69:15 69:23	48:21 48:22
27:3 40:4	236:15	69:25	49:2 49:8
178:1	21 201:5	70:7	49:23 50:15
180:11	201:7	70:17	50:22 50:24
182:11	218:24	71:4 72:8	51:5
190:9	219:11	72:9 72:9	51:21 51:23
190:23	21st 6:1	73:12	52:1 61:7
198:5	184:8 187:6	77:6 83:4	61:8
198:18	187:7	94:4 95:1	61:21
199:3	23 103:12	95:4 96:8	65:4
199:13	104:8 107:3	173:17	66:11 67:10
207:20	115:14	173:18	68:21 71:1
211:21	116:1	3:00 155:24	
212:12	118:15		
	119:4		

73:10 74:10	6 55:16	9th 184:25	239:18
75:20 76:15	96:8		accept 154:7
77:5 77:7	97:12 99:11	<u>A</u>	acceptable
80:6	198:7	a.m 4:4 17:10	169:6
80:11	213:13	17:11 34:14	169:10
173:22	6th 184:24	34:15	accepted
213:4		80:2 80:3	105:6 150:5
213:11	<u>7</u>	abbreviate	166:14
217:3 217:4	7 25:1 52:4	49:9	233:19
241:21	52:12	abilities	access
4:17 245:10	53:5 182:25	174:17	204:6 221:3
4:18 246:4	213:11	ability 48:15	221:15
246:11	7:45 245:20	176:12	221:23
4:30 189:19	7th 160:6	187:22	222:20
245:10		193:1 204:5	accommodate
4th 160:5	<u>8</u>	221:3	17:2
	8 148:25	221:23	accomplished
<u>5</u>	150:1	222:1	245:11
5 74:11 80:25	199:10	able 18:19	accomplishing
81:21	8:00 245:19	18:24 145:8	163:22
85:9	245:24	159:10	accordance
85:18	245:25	176:22	31:6 52:7
87:8	246:4	177:13	52:15
87:15 87:17	8:30 189:20	186:16	53:5 53:8
87:20	245:17	186:18	53:15 58:16
88:1		196:9	59:4 59:8
94:23	<u>9</u>	197:19	60:9 214:2
95:3 173:22	9 148:25	241:3	according
213:4 217:7	150:1	absence 84:25	24:11 28:17
243:12	208:15	87:19	55:16 74:16
244:2	9/16 27:4	absolutely	75:24
51.9 9:16	9:00 4:14	180:23	81:3
581 49:23	9:05 4:4 4:14	181:8	85:11 138:2
581-015 48:25	9:20 17:10	197:21	151:9
581-015-	9:21 17:11	232:20	151:12
2065 47:9	9:41 34:14	academic	160:20
5th 5:21	9:49 34:14	215:11	162:12
		221:13	184:15
<u>6</u>		222:13	217:12
		223:15	217:17

242:1	active 153:10	196:17	191:4 191:6
242:12	activities	203:2	202:12
242:14	193:6 241:4	203:14	address
Accordingly	actual	206:8 206:9	6:17
28:10 29:8	47:20	208:11	22:12 23:19
account	100:15	208:12	23:20 29:22
155:19	178:11	213:25	30:5
207:14	185:12	221:6 221:8	31:23
accurate	220:12	223:21	36:7 45:6
24:16	228:17	234:4	50:7
140:18	actually 8:10	235:13	63:13 95:23
187:18	10:6 11:4	236:12	119:15
195:18	20:9 22:9	236:18	167:15
accurately	22:20 27:20	245:14	203:19
83:25	27:21 33:10	add 116:12	207:3
233:18	36:12	116:15	221:22
236:21	45:2	added 44:2	222:7
acquiring	45:15 50:21	addition	234:13
125:9	51:4	22:18 89:7	246:5
acronym 87:25	62:23 67:24	additional	addressed
214:25	79:19	22:21 26:17	78:14
across	82:6 83:8	28:2	116:11
24:15 164:6	86:10	60:18 102:8	156:11
act 10:5 10:7	95:1 100:19	102:10	208:6 209:5
115:10	105:23	116:5 135:2	222:2
acted 31:6	110:7	139:15	adhere 147:14
action 107:13	116:23	152:20	adhered
109:8 128:3	129:21	152:22	154:24
138:8 138:9	132:8 158:9	187:14	adjourned
138:13	159:10	187:15	246:10
141:17	163:5 168:3	187:25	adjustment
141:18	169:2 169:9	190:3 190:4	185:25
142:9	172:4	191:20	186:7
142:17	173:16	227:9	240:24
198:4	182:23	229:17	administrativ
212:11	185:1	234:23	e 4:7 4:8
actions	186:15	additionally	6:23
145:20	186:18	53:23 54:11	13:13 13:14
	188:13	113:7	42:10 44:1
	193:17	113:18	
	195:12	157:14	
	195:15		

47:20 57:16	209:18	113:17	48:14
57:20 75:23	210:3	125:13	49:5
76:18	211:15	Agency 59:5	51:15
96:1 101:11	211:17	agenda	64:5 75:3
105:17	212:6	92:15 92:16	75:8 78:5
114:16	212:18	164:20	79:23
144:17	212:20	191:7	80:4
administrator	229:3	191:10	88:22
158:9	adopted	199:2 207:6	90:8 94:1
admissible	214:17	ago 65:23	95:13
46:1	adults 193:1	67:1 68:1	103:18
admission	advance 26:16	agreeable	106:4 117:7
33:2 211:5	197:12	165:17	119:12
admit 228:25	212:23	167:4	121:23
admitted 25:1	advice 14:9	167:18	125:21
25:5	14:10	agreed 106:18	134:1
34:19	affect 204:19	138:3 150:6	135:21
43:1 43:3	205:18	165:6 165:9	153:16
46:5	affirmative	204:13	156:18
60:25	240:15	233:19	169:23
61:2	affirmatively	agreeing	172:13
105:3	197:6	147:13	189:10
105:12	affirmed	agreement	199:21
148:16	235:22	107:11	229:4 246:8
154:16	afford	108:18	albeit 188:18
161:16	88:21 151:3	137:12	align 238:1
161:18	170:13	165:25	238:3
162:1 162:3	afforded	167:1	alignment
174:10	125:1	199:25	56:14 80:12
190:19	191:21	201:14	80:20
190:21	192:13	202:9	aligns 96:1
198:10	196:14	202:11	96:5
198:12	196:16	236:14	ALJ 246:4
198:22	affording	agreements	allegation
198:24	54:1 54:14	61:22	36:17
201:4	afternoon	ahead 15:6	allege 37:1
207:13	144:15	20:3	alleged 7:8
207:16	agencies	24:25 39:12	7:15 9:24
208:18		39:17	allocation
208:21		44:4 46:6	113:16
209:16			

allow 12:25 20:13 29:20 84:5 132:18 207:11 243:6	97:13 amend 68:9 amended 25:13 26:5 26:22 46:17 46:18 67:3 67:6 67:14 67:16 68:11 89:22 204:22 207:19	54:11 55:9 55:22 63:10 66:1 66:13 68:13 70:6 71:20 72:2 72:14 75:1 75:3 75:5 76:2 76:19 76:22 82:6 82:21 85:25 88:9 97:22 101:20 101:24 102:15 112:8 112:17 118:5 118:17 119:13 128:14 133:8 133:9 135:24 140:10 192:23 229:24 231:24 235:10 236:6 237:5	answers 154:3 antecedent 168:14 antecedents 240:10 anticipate 18:1 18:21 79:25 anticipated 16:20 anticipating 17:1 anybody 99:3 anyone 5:8 5:15 34:13 116:2 149:9 154:15 anything 14:1 14:23 15:17 25:7 39:11 50:16 52:16 117:11 130:19 135:13 221:20 227:18 234:24 245:11 246:5 anyway 21:7 63:18 136:3 154:11 anywhere 48:10 51:25 55:23 58:3 58:24
allowed 37:2 37:4 62:24 156:10 227:8	26:22 46:17 46:18 67:3 67:6 67:14 67:16 68:11 89:22 204:22 207:19	71:20 72:2 72:14 75:1 75:3 75:5 76:2 76:19 76:22 82:6 82:21 85:25 88:9 97:22 101:20 101:24 102:15 112:8 112:17 118:5 118:17 119:13 128:14 133:8 133:9 135:24 140:10 192:23 229:24 231:24 235:10 236:6 237:5	
already 37:7 65:13 65:15 106:2 139:18 157:4 163:2 187:11 188:20 201:4 208:9 220:3	amending 66:20 amendments 61:22 among 135:23 amongst 130:21 amount 175:14 analysis 238:22 and/or 94:17 178:21 187:18 annual 71:6 73:10 181:18 215:8 215:10 annually 69:21 70:12 72:15 78:12 79:16 89:19 177:17 234:13 answer 13:2 15:6 39:7 39:7 54:7	answered 54:19 84:13 93:16 99:15 99:17 106:23 128:18 140:24 147:1 241:6 245:3	
alternative 214:13 214:14 214:15 214:16 219:21	am 8:10 9:8 20:6 29:18 37:13 54:23 57:6 57:9 65:6 98:12 99:13 136:23 140:17 173:3 227:8 amazing 186:6 ambiguity 82:7 97:21 ambiguous		

108:24	181:9	approved	204:17
apologies	224:12	219:5	205:7 207:1
25:21 108:3	applies	approximately	207:20
apologize	9:10	68:1 194:2	211:21
10:15	18:15	April 6:1	212:12
11:6	225:20	23:24	236:16
55:11 76:25	apply 13:16	24:3 24:7	area 59:24
106:2	23:14	107:10	108:23
116:19	176:18	137:19	109:8 136:4
197:12	199:17	137:22	169:3
212:23	218:12	137:24	213:18
apparent	218:14	138:1 138:6	221:13
30:20	225:19	138:6	221:25
Apparently	applying 48:9	139:19	222:1 238:4
145:10	appointed	139:20	239:10
149:18	163:4	140:16	areas 73:19
appeal 13:22	163:19	143:13	96:10
appealed	163:25	147:15	102:12
13:20	appreciate	147:16	174:17
205:21	8:17 209:1	150:12	177:17
appear	apprise 28:11	151:5 167:7	187:23
17:21 32:17	approached	167:15	215:24
110:3 119:5	117:20	170:7	216:8
120:20	appropriate	170:12	221:10
appeared	7:11 10:3	171:2	223:4 227:6
170:4	10:11 21:16	171:12	232:16
appears	36:19 52:20	177:5	aren't 91:8
8:25	73:18	182:11	argue 63:4
31:17	77:9	193:23	97:19 205:2
35:7	77:13 78:18	194:21	205:23
41:12 43:25	79:1 80:9	195:6 195:9	argued 44:8
44:14 102:3	97:5 97:7	196:1 196:3	argues 32:13
102:24	97:10	198:18	arguing 204:8
103:12	100:22	199:3	argument
103:15	177:10	199:13	22:18
109:6 109:7	177:11	199:17	33:3
149:1 151:9	193:20	200:3	33:23 62:22
211:9	201:17	201:19	63:16 72:21
apples	appropriately	201:25	179:18
	69:7 218:20	202:16	argumentative
		204:1	
		204:12	

73:1	107:18	attend 142:23	113:22
arguments	assist 166:9	149:22	autism 159:24
33:24 196:3	assistant	attendance	223:5
arise 113:18	105:17	90:18 91:24	240:22
Armbrust	144:17	128:24	avail 178:24
107:17	158:12	attendees	available
108:1 122:2	158:14	111:2	19:23 84:17
122:10	assisting 5:5	149:16	84:23
163:24	associated	149:23	88:2 163:11
164:4 169:2	178:21	attending	165:5 233:6
169:9	assume	5:10 159:15	avenues 13:22
234:14	10:17 12:13	attention	avoid 95:9
arrangements	30:24 33:25	14:22	aware 5:9
18:10	47:10 105:5	attorney	41:22
array 240:10	149:2	131:11	172:23
arrive 160:19	230:15	audible 19:25	172:24
arrived	230:23	54:21 83:15	173:3
177:24	245:5	105:9	186:22
180:25	assumed 140:2	194:20	
art 107:24	assuming 18:7	246:2	<hr/> B <hr/>
assess 214:17	136:24	August	background
assessment	205:22	41:18 41:20	157:3 157:5
191:2	206:4	42:8 43:8	228:18
214:20	assumption	43:9 66:2	230:14
215:2	90:25	66:20	backtrack
227:24	230:12	67:4	46:25
228:12	232:6	67:11 67:14	bad 133:2
232:24	attached	67:15 67:17	balancing
237:17	143:19	68:10 68:14	9:16
237:20	attempt	68:16 89:23	base 41:25
237:25	106:16	authenticate	42:2 42:3
assessments	192:24	197:24	55:3
214:13	attempted	210:11	55:12 55:24
214:14	122:2	authenticity	74:3 129:17
214:15	attempting	210:2 210:4	177:3 177:6
214:16	88:16	author 231:11	based 6:15
216:3	attempts	authority	14:17
assigned	159:18	113:22	15:9 25:14
		authorize	

34:2 42:1	222:25	216:22	53:21
42:8	223:3 223:3	bearing	56:5 58:6
43:14	224:15	223:19	59:2 62:6
55:2	230:16	bears 7:13	64:9
57:11 59:15	242:25	became 40:8	68:23 80:18
59:19 59:20	243:11	158:8	87:25
61:14 62:17	244:3	become	172:22
70:22 74:14	baseline	14:21	189:5 191:2
86:11 86:24	188:5	154:11	191:3
87:20 87:23	188:10	becomes 24:23	213:19
88:5	226:10	begin 8:23	220:25
89:19 94:17	226:12	21:3	221:4 222:1
109:25	226:14	22:10	223:5
110:2 113:7	baselines	218:25	223:15
114:15	226:9	245:13	227:24
114:18	bases 173:1	245:19	227:24
118:14	basically	beginning	228:12
118:18	47:9	27:16 30:13	232:23
119:14	69:15	44:22	237:20
123:3 123:4	72:9	90:3 95:5	237:21
123:17	159:4 211:6	110:16	238:2 238:4
123:20	basics 13:12	110:21	238:20
124:4 124:5	basis 23:10	110:22	238:22
124:19	32:23 53:20	122:7 154:8	238:23
129:4 130:4	59:8 60:9	157:3 159:4	240:21
139:6	62:16 130:2	203:24	243:22
153:12	130:3	235:20	behavioral
166:11	159:15	begins 14:21	196:8
166:22	171:16	behalf	222:13
171:19	172:18	39:18	223:7
175:17	172:20	113:23	228:11
177:18	179:19	behavior 43:7	237:18
180:9	214:2	47:24 48:12	239:5
180:14	244:15	48:18 49:11	239:16
180:15	244:16	49:12 49:14	239:18
181:25	244:19	49:21 49:25	243:9
186:5	Bear 20:15	50:1 51:1	243:10
186:21	99:20	52:3 53:3	behaviors
188:16	140:25	53:18 53:19	48:19
201:10	154:21		50:8
205:4			50:10 50:11
217:10			51:20
220:24			

86:7 175:16	175:12	binders 30:14	bounce 212:25
213:18	177:11	38:16	box 138:4
221:14	186:10	BIP 243:23	brand 29:7
229:6	191:5	bit 11:2	124:2
232:18	192:24	38:19 81:12	break 24:10
belief	213:11	93:15	24:13 24:15
129:6 130:2	225:12	115:22	34:13 38:21
130:3	226:5 227:6	121:12	74:21 79:20
believe	227:21	123:9 131:7	147:12
5:20 19:9	235:9 236:5	134:6	150:23
20:18 23:14	236:12	134:12	151:4 152:2
27:22 31:19	244:11	158:5	153:5 153:8
33:17 48:16	believes	158:21	155:20
49:7	63:10	160:23	156:22
54:23 55:22	172:11	166:5	165:18
56:13 58:13	Bernadette	179:16	167:3 167:5
58:14 58:20	4:7	180:4	167:16
61:20	best 47:7	183:25	167:18
64:7	47:19 48:15	187:16	175:22
64:21 75:18	50:3	190:1	175:22
76:13 77:14	101:1	190:13	176:25
78:2	108:25	192:19	177:4 178:9
78:19	109:3	197:13	182:17
79:2	122:20	212:24	182:19
81:22 82:18	128:6	212:25	182:20
88:3	141:22	243:7	184:6 184:7
90:19	142:2 142:5	black 161:1	184:13
98:9 106:15	144:3 144:6	black-and-	185:2 185:3
114:8	145:14	white	185:5 185:7
114:12	146:6 147:8	225:25	185:14
114:15	147:10	blank 219:16	186:4
115:3 115:8	159:7	blocked	186:17
122:2 122:9	better	159:18	186:25
129:8	18:24	bolt 159:18	187:2 187:3
129:24	177:12	book 45:5	187:5 188:4
130:13	192:19	bottom	189:7
133:13	beyond	103:9 171:7	189:11
135:24	28:13	201:17	190:2 190:4
142:7 143:8	219:22	219:11	191:22
145:2 160:6	binder		192:4 194:4
165:8	161:2 173:9		194:7
175:12			194:17

194:18	117:9 179:4	182:23	134:25
194:19	229:11	182:25	144:4
194:25	237:4	183:1	153:25
195:8 195:8	bringing	183:23	169:8
195:20	22:16	185:2 185:4	180:21
195:24	broad 58:1	187:3 194:1	180:24
200:12	112:6	195:15	182:7
203:1 203:5	205:11	195:22	183:25
203:6	brought	195:23	200:6
206:10	7:13 9:24	195:25	200:13
208:24	23:16	196:6	200:17
208:24	54:3	cancelled	201:23
209:1 212:1	125:6 128:7	184:21	215:9
218:4 218:8	128:10	capacity 40:6	217:18
225:23	137:15	40:13	cases 13:19
226:15	170:18	158:18	13:25 73:16
239:11	173:23	care 18:10	77:7
239:25	186:12	189:18	78:16
240:2 241:5	197:14	232:12	154:23
241:5	234:11	carry 232:10	catch 54:24
breaking	234:23	case 4:12	category 52:7
188:20	BSP 241:23	5:25 6:6	159:22
breaks 112:23	build 134:11	6:9 7:12	cause 239:12
186:2	building	9:6 9:6	caution 190:4
192:10	18:23	10:13 11:24	cell 5:13
194:14	159:19	12:24	17:6 18:2
238:7	178:20	13:7	18:5
239:21	built 223:14	13:18 13:23	18:20 176:6
240:18	bunch 213:21	15:18	center 149:2
brief 15:16	burden 7:13	21:8	central
22:18 23:25	9:5	22:11 22:22	31:5 134:24
28:17	132:10	24:12 24:20	200:5 200:6
briefly	204:19	31:23 32:13	200:13
32:8 122:22	204:23	33:17 36:15	certain
182:17	business 28:8	36:21	114:17
188:3	211:6 211:8	63:3 116:16	189:1
188:18		123:21	certainly
237:9		131:11	11:3 23:21
bring 22:4		132:14	
51:6 99:3		134:9	
103:1 110:8		134:23	

24:4 24:5	chart 196:13	Cindy 91:4	220:10
24:8 28:4	charts	91:16 91:22	221:6
29:23	87:25 197:1	92:5	223:23
180:20	check 135:4	C-i-n-d-y	224:11
208:25	135:5	91:16	236:2 239:4
236:22	checked 138:4	circuit 13:20	clearly 9:1
cetera 101:12	check-in	circumstances	24:10 93:15
CFRs 213:22	134:12	82:17	199:22
214:7	child 53:14	cited 56:1	238:20
challenges	59:10	claims 192:9	239:17
117:21	124:16	clarification	243:7
186:2 186:7	176:11	64:23	clerical/
188:19	214:5	66:5 107:22	conference
237:18	215:13	233:25	187:7
change	221:14	236:23	close 7:20
45:13	children	clarify 25:22	8:5 18:3
132:17	179:24	36:11	closing 63:17
180:22	child's 48:17	45:2 45:4	63:20
188:23	49:10 49:25	45:20	Code 213:22
188:23	52:8	49:7	214:7
188:23	52:10 52:15	53:11 55:20	Cohn 23:12
207:21	52:17	58:23 71:21	37:18 42:23
209:25	53:8	82:9	202:7
240:14	53:15 53:17	83:17	Cohn-Lee
240:17	58:17	86:5	5:1 5:1 5:5
240:23	59:4 60:8	122:3 156:9	5:7 6:2
241:3	214:1	clarity 60:24	7:17
changed	215:12	105:23	11:13 11:15
29:5	215:13	classrooms	11:19
33:18	215:15	158:1	13:4
185:22	215:16	clear 20:18	14:10
changes 61:22	227:5	48:20 50:19	15:2
152:5	chime 220:4	54:19	15:16 16:15
185:20	chimed 147:11	68:5 70:6	16:18 16:24
225:16	chose 9:5	70:7	18:7 19:2
226:13	Christmas	97:21 97:24	19:9
changing	153:5	98:1	19:15
188:13	182:21	205:8	21:8
226:25	182:21	218:15	21:23 22:9
charge 114:8			

22:20 23:18	140:17	200:24	235:14
23:21	141:5	201:2 201:7	236:2 236:9
25:9 26:9	143:12	202:17	237:9
27:7 27:9	147:22	203:25	237:11
27:14 27:17	148:4 148:8	205:8	241:16
30:6 30:9	148:12	205:13	241:18
30:12 30:16	148:18	205:22	241:20
30:19 32:12	148:21	206:2 206:7	242:4
32:24	156:4	206:12	242:16
34:1 34:7	156:15	206:18	242:20
34:24	156:20	206:23	243:1 244:5
35:7 36:6	158:20	207:2 207:9	244:9 245:7
36:13	161:12	207:12	246:1 246:2
38:6 39:8	161:19	207:17	246:7
41:4 41:7	161:23	207:23	Cohn-Lee's
42:25 43:24	162:4 163:1	208:4	231:10
44:24	167:11	208:10	collect
45:1	167:12	208:14	50:9 55:7
50:18	167:19	208:22	119:20
51:4	170:2 172:4	209:19	121:19
52:18 52:22	172:14	210:9	124:14
71:12 79:19	173:15	210:13	147:12
81:7	174:4	210:21	151:4
81:11	174:11	211:18	166:16
82:4 83:6	176:14	211:22	171:1
83:15 83:23	183:4	212:8	186:25
94:24 97:15	183:12	212:13	collected
99:13	183:17	212:21	28:17 152:2
100:11	183:20	215:5	152:6
100:25	189:9	216:16	182:19
101:2 101:9	189:12	220:18	196:11
103:11	189:24	221:5	200:12
104:15	190:16	223:21	203:2 203:8
104:19	190:22	226:24	collecting
104:24	193:8	228:14	86:6 185:19
105:3 105:9	193:11	228:23	collection
105:22	197:5 198:6	229:14	100:21
106:22	198:13	229:16	153:6
114:24	198:19	229:19	170:19
123:8	198:25	230:10	college
131:21	199:9	231:8	157:23
134:3	199:20	234:15	
137:21	199:22	235:1 235:8	

colloquy	232:15	completeness	98:7 137:14
163:3	commingled	100:23	170:7
164:15	206:12	101:1 101:2	170:11
166:7	common	101:3 208:1	170:13
166:19	122:3	compliance	196:7
170:21	122:10	6:21	221:17
170:24	169:3	62:18 118:7	222:8 229:6
170:25	communication	157:13	concerned
171:8 172:5	163:14	complies	56:6 187:16
191:23	223:5	61:10 70:20	concerning
coloquy 220:5	223:15	161:5	24:16
column	compared	164:18	concerns
61:20 61:21	214:21	194:10	108:16
107:4 107:8	comparing	198:2	178:2 188:8
107:14	103:6 181:9	198:15	188:9
combined	compel 6:7	comply 37:2	conclude
45:11	6:11 25:24	162:11	157:16
comes 36:12	compelled	complying	concluded
37:8	237:19	9:13 36:18	179:12
37:25	complaint	components	conclusion
154:24	7:13 9:24	214:11	193:18
160:9	23:16 36:17	214:12	concur 33:5
comfortwise	36:24	215:6	61:15 61:16
14:3	complete	compound	85:16
coming 116:21	100:19	72:25	234:24
137:10	100:20	111:11	concurred
145:15	102:9	235:2 235:7	86:13
comment	103:14	236:10	234:16
107:15	134:9	compounded	condition
203:11	147:24	186:2	159:22
203:12	147:25	comprehensive	conduct 200:8
226:18	completed	50:6 177:19	conducted
commentary	27:9	215:22	162:7 162:8
167:4	completely	232:25	conducting
comments	29:10 31:13	237:17	145:23
130:4 130:6	31:20 33:14	237:19	conference
151:16	35:9	concept	5:23 15:9
166:6	35:18 140:9	179:17	confidence
182:16	156:11	concern	

185:18	235:18	219:16	context 45:9
188:10	235:21	221:10	continue
Confidential	235:22	considering	147:12
227:23	235:23	88:20	155:22
conflict 87:2	236:5	139:24	189:22
151:2	consensus	223:11	continued
conflicting	140:13	consisted	125:6 178:7
87:7	consider 6:20	112:10	continuing
conflicts	6:24 59:3	112:13	156:21
87:9	69:20 70:11	consistent	178:1
confused	70:16 70:23	146:3 220:1	contract
98:15	72:14 78:11	consolidate	163:8
conjecture	124:6	6:7 6:12	contribute
230:4	124:13	consultation	40:15 113:6
consecutive	147:4	96:11	238:21
185:1 187:8	194:21	contact 112:1	contributing
187:9 192:5	219:21	112:3	139:23
195:21	219:23	contacted	convene
consensus	232:24	159:1	4:13
107:10	consideration	contain	181:3 200:3
129:4 129:7	69:12	178:11	convened
129:8	72:3	193:17	190:11
129:10	79:13 82:15	contained	190:24
129:11	121:6	24:9 158:1	190:25
129:13	138:23	contains 24:9	208:5
129:15	138:24	contend 80:20	208:16
129:17	138:25	153:9	convening
129:18	170:12	content 59:24	4:10 181:18
129:25	191:7	104:13	conversation
130:10	200:19	104:22	108:11
130:13	204:24	116:13	116:14
137:18	considered	116:16	124:17
138:10	38:2	222:15	169:5
138:14	71:10	contention	226:23
140:2 140:4	124:25	53:1	conversations
140:11	125:17	95:25	19:16
140:14	145:19	96:4 127:11	115:17
170:5	145:22	137:9	137:6 159:5
202:11	167:8 175:1	coordinator	
234:22	201:18		
	208:12		
	211:25		

158:10	66:1 67:2	182:3 184:3	193:11
copied	67:13 68:15	184:4 185:3	211:7
46:10 47:10	70:13 71:11	188:7	court 8:12
65:10 68:14	80:13 85:18	190:11	8:19
68:18	85:19 86:14	190:12	13:20 13:21
copies	86:25 88:14	190:15	21:25
26:23 30:15	89:24	193:19	102:21
141:9	91:2	193:24	106:1
copy 11:16	98:20 98:24	193:25	115:19
26:9	100:9	208:4 210:9	153:15
30:21	100:10	211:2	155:19
41:1 41:6	102:5 102:6	216:16	cover 14:23
41:21 43:16	104:15	216:21	33:8
43:19 43:20	105:8 111:3	218:10	covered 36:16
44:18 47:14	111:7 113:3	219:24	53:12 92:20
47:16 47:18	115:17	224:1 224:6	92:21 92:23
56:23	120:2 128:9	224:10	92:25
57:1 60:1	132:2	225:13	93:4
60:22 60:23	136:23	233:8	157:2 157:4
60:25	137:20	234:25	create 9:2
61:1	139:5	correctly	14:16
68:15 100:5	139:14	84:3 162:21	46:9 65:16
105:14	139:16	correctness	created
141:4 141:6	141:22	24:2	45:9 105:16
141:8 142:7	142:1 142:3	correlate	205:1
144:11	146:4 146:5	224:13	231:17
144:13	146:8 146:9	224:15	232:21
145:6 173:8	151:14	corroborate	creating
196:17	151:18	203:15	201:21
196:19	151:20	counsel 28:6	creation
correct	154:8	country 173:5	124:14
4:22 4:23	162:17	couple 138:18	210:25
5:6 5:7	162:18	139:10	criteria
17:24 25:25	162:24	188:11	55:15 74:12
26:3	164:2	197:14	74:13 80:15
26:13	165:23	213:10	80:25 81:21
27:5	166:3 166:4	223:24	83:3 83:7
40:12 42:11	167:8 167:9	course 9:9	83:22
46:3 49:1	167:19	46:14	85:8 87:9
49:3 56:9	168:22	189:12	92:19 123:6
56:12 63:20	170:8 170:9		
65:12	181:4 181:5		
	181:21		

175:6		D-3 161:1	23:23
194:12	<u>D</u>	161:20	25:2
217:8 217:9	D-1 25:1 25:4	161:20	199:1 199:2
critical	173:7	161:21	199:4 205:9
28:24	173:11	161:23	207:5
cross 20:10	173:12	162:2 162:5	207:15
21:8	174:4 174:9	162:6 201:5	D-9 207:18
103:1	174:12	201:8	207:19
131:12	194:9	218:23	208:1
cross-	194:11	218:24	208:20
examination	213:3 213:3	D-4 100:20	daily 159:15
12:24 21:24	213:4 217:3	103:11	data 24:4
22:2 155:13	217:3	103:11	24:8
156:19	241:16	104:14	24:16 24:16
cross-examine	241:18	104:17	26:25
156:15	241:19	105:5	27:4 27:5
cues 8:20	241:20	105:11	28:17 28:19
cum 125:10	D-10 24:9	107:4	29:14 32:16
current 33:12	206:9	110:24	32:18 33:19
108:23	208:12	111:2	50:9 55:7
124:4 124:5	208:22	115:14	55:15
146:4	209:3 209:6	138:8	70:3
153:13	209:15	164:11	73:15 73:23
157:4	209:17	D-5 147:25	74:1 74:5
177:23	210:7 210:7	148:17	74:7 74:9
181:25	210:8	148:21	74:19 74:22
229:8	D-11 209:20	148:25	75:13 75:18
229:22	209:21	190:6 190:7	75:21 75:24
230:7	210:7	190:8	76:13 76:16
231:23	211:16	190:16	81:24
232:4	211:19	190:19	82:2
currently	211:20	190:20	82:17 82:19
39:25	212:4	D-6 198:1	83:4
153:10	D-12 22:24	198:3	83:11 83:20
159:23	23:8	198:11	83:25
curriculum	212:9	D-7 25:5	84:6
215:15	212:10	198:14	84:17 84:23
cut-and-paste	212:19	198:16	84:25
213:6	D-2 161:4	198:19	86:6
	161:6 161:7	198:23	86:11 86:13
	161:17	D-8 23:7	86:21 86:22
			86:25 87:24

88:2 88:4	186:10	217:15	146:10
88:5 88:6	186:15	217:16	165:10
88:10 88:11	186:22	217:20	166:17
88:12	187:11	217:21	166:17
119:20	187:11	217:25	167:8
121:8	187:14	218:16	170:12
121:19	187:17	218:18	199:11
123:25	187:18	220:12	207:25
124:1 124:5	187:18	220:16	208:5 208:6
124:7	187:25	221:22	208:9 210:6
124:25	188:4 188:6	222:6	219:17
125:2	188:10	222:10	219:22
129:16	190:1 190:3	224:2 224:4	238:5
129:19	190:4	224:11	dated 228:13
137:1	191:21	229:12	dates 146:3
138:21	193:17	231:6 238:1	183:14
147:12	193:19	238:8	204:17
151:4	195:8	239:22	dawn 21:13
151:21	196:10	242:22	day 27:22
151:24	196:13	242:24	28:2 28:8
152:1 152:6	200:9	243:20	139:4 162:8
152:14	200:10	244:25	162:23
152:20	200:12	database	165:10
152:22	202:25	47:11	184:5 184:7
153:2 153:6	203:1 203:1	data-	184:13
153:17	203:3 203:7	gathering	185:10
153:17	206:4	33:11	187:5 187:7
153:18	206:10	date 4:13	187:8
165:4	206:19	5:21	189:20
166:16	206:25	25:17	194:6
167:16	207:7 208:8	27:3 27:3	201:14
170:19	208:11	27:22 65:20	246:10
171:1 171:4	208:11	66:4	days 9:7
174:14	208:11	73:17	131:8 134:8
178:5	208:23	77:9	135:2 155:6
178:11	208:23	77:11 78:18	184:10
178:12	209:1 210:8	78:25 79:15	184:12
179:19	210:8	80:8 121:10	184:16
182:1	210:25	122:11	184:19
182:13	211:2	137:22	184:20
185:19	211:13	138:5	184:22
186:3 186:5	211:24	138:11	
186:9	212:1		

184:22	205:25	making	123:25
185:2 185:4	deciding	166:16	deferring
185:8 185:9	236:15	decisions	122:4 123:1
185:10	decision	73:15 73:24	deficient
185:13	14:17 19:10	74:2	205:1
187:8 187:9	24:3 81:2	74:22 75:22	define
192:5	85:10 115:5	76:17	216:5
192:11	119:6 121:8	118:23	216:14
194:3	122:15	119:2	225:3
195:15	123:17	119:20	defined
195:19	125:2 127:4	121:19	55:6 176:5
195:21	127:8 128:1	153:11	defines
195:22	128:12	166:18	225:10
195:23	128:21	172:24	definite
195:25	128:23	180:16	137:14
196:6	129:9	200:20	definition
225:22	138:10	deem 114:18	29:9 58:2
deadlines 6:4	138:14	128:12	88:11
deal 37:7	139:18	deemed 97:5	130:11
148:6	170:14	97:7	201:20
dealing	171:12	97:10 159:9	degree 157:24
147:23	177:3 177:6	defect 131:25	delay 203:21
deals 30:14	182:14	132:5	delayed
Dean 35:8	185:17	200:21	202:22
35:14	190:2 195:4	200:22	203:23
death 155:7	203:4 203:5	204:4	deliberative
December	203:16	defensible	8:10
184:8	204:2	180:6	deliver
184:11	205:25	defer 24:22	125:11
184:24	207:21	24:25	216:9
184:25	207:25	121:10	delivered
184:25	208:3 208:5	122:25	104:10
decide	208:16	123:18	104:10
154:6 163:8	212:15	127:16	demonstrate
182:9	217:19	130:1	29:1
236:14	219:9	217:19	80:17
decided 24:14	220:16	219:22	174:17
109:18	222:9 223:8	228:14	175:8
127:16	235:17	236:5	
205:23	236:5	deferred	
	243:10		
	decision-		

175:21	107:9	234:2 234:5	153:10
demonstrated	113:20	234:10	165:10
202:25	114:10	234:18	165:11
demonstrating	122:4 122:5	234:22	166:17
239:9	122:11	239:23	169:16
239:16	122:25	244:20	172:1 172:2
denied 6:11	123:2	244:25	178:6
6:12 6:13	123:18	determination	181:25
Department	124:15	s 54:2	193:20
46:10 47:12	147:14	54:15	222:19
65:8 107:18	147:15	55:8	determines
163:12	147:16	165:5 173:2	59:13
163:20	150:20	determine	60:8 171:15
166:15	150:22	49:20 61:13	214:2
219:3 219:5	151:3 151:5	73:17	determining
depending	162:8	74:7 77:9	23:15 59:20
104:11	162:22	77:12 78:18	74:12
104:21	167:2	79:1 80:8	171:17
depends 32:24	168:23	123:22	172:18
describe 8:25	169:6	126:3 138:6	172:20
176:15	169:24	145:23	217:8
196:25	170:6	145:24	develop 14:15
description	177:25	146:19	74:12 201:9
220:14	178:6	150:7	217:8
designation	179:14	165:17	237:19
131:16	180:17	165:22	developed
designed	182:10	166:2	29:7
215:11	182:12	167:17	29:13
221:2	186:19	168:6	126:16
desires 151:2	187:12	168:12	152:3
determination	191:17	169:22	161:21
6:8 6:10	199:25	201:15	162:11
24:7	200:4	211:1	218:8 219:3
29:11	201:25	214:20	219:10
55:4 74:3	202:4 202:5	223:11	225:23
81:25	202:22	226:11	228:12
82:3 83:5	204:3 204:8	241:17	development
84:18 84:24	206:25	determined	6:18 7:6
86:14 86:22	222:24	50:8	14:12 61:12
	223:18	96:24 124:3	64:19 70:24
	233:10	138:3 138:5	71:11
	233:13	146:3 148:9	

79:6	173:4	68:2	170:23
79:12	difficult	68:12 68:23	170:25
116:10	131:10	75:6 79:4	disagreement
129:2	difficulties	79:8	113:8
177:19	228:22	79:10 80:19	114:23
180:16	difficulty	94:7 106:24	115:4
191:2	125:6	118:12	127:21
223:16	direct	202:6	130:7
234:13	12:25	202:23	150:21
238:24	13:1 15:5	203:9	152:18
dialogue	20:7	221:17	152:22
93:12	20:13	224:2 224:3	167:6
119:17	21:5 21:9	225:20	171:11
169:2	21:17	director	236:17
190:14	22:2	5:2 39:25	discard
DIBELS 87:24	39:21 40:21	56:6	222:14
D-I-B-E-L-S	40:22	66:24 113:1	discounting
87:24	73:3	157:8	115:15
dictated	112:1 112:3	158:17	discovery 6:7
33:11	112:23	172:9 180:6	142:6
difference	131:15	210:11	144:10
235:24	132:19	230:14	discrepancies
different	134:20	244:19	103:1
27:3 29:7	189:23	244:24	discrepant
33:15	235:10	Disabilities	102:23
35:9	directing	10:5 10:7	discretion
104:1 104:4	157:15	disability	63:14
104:22	direction	53:14	discuss 31:10
107:23	86:5 144:14	215:13	116:6
111:22	directly 21:7	215:17	116:23
133:14	21:10 24:18	disabling	116:24
172:25	43:7	159:22	120:15
173:1 224:8	47:24 48:12	disagree	120:23
225:25	49:14 49:22	92:20	122:15
226:2 226:6	51:1 53:4	130:12	125:16
226:8	53:21	147:14	141:19
226:14	56:1 56:5	202:7	141:20
differently	57:3 58:6	disagreed	141:24
108:6	59:2 62:6	191:20	141:24
115:22	64:9 64:24	233:22	141:25
		disagreeing	

142:12	225:21	222:21	60:4
145:16	discusses	222:23	62:18 66:24
146:1	71:6 73:11	223:8	73:14 73:14
146:14	discussing	discussions	73:22 75:21
164:24	129:20	164:9	76:16
165:18	151:10	disprove	86:8
167:5	200:10	187:18	91:23
167:18	discussion	dispute 114:3	93:3
168:21	7:2 17:10	201:23	113:9
175:13	62:12	disputes	113:10
191:4	101:15	113:18	113:12
191:12	107:13	114:6 115:4	113:14
203:18	109:8	district 4:12	113:19
223:7	109:16	4:25 5:2	113:23
discussed	109:24	6:19 7:2	114:2 114:9
29:14 62:14	115:25	7:5 10:2	119:14
108:24	116:13	10:14 12:22	121:5 121:7
109:1	116:16	13:21 17:16	121:16
114:22	117:4	19:7	121:17
116:3	118:15	21:16 22:17	123:3 123:4
122:18	119:15	22:19	123:21
125:3	121:25	24:6	126:7
130:21	122:21	24:14	130:21
135:23	127:16	25:4	131:17
136:25	128:3 130:1	26:13 27:20	132:18
137:8	138:8 138:9	28:6 29:4	134:9
137:11	138:13	29:6 31:1	135:23
140:15	139:5 147:7	31:6	143:7
146:17	149:2 150:4	31:12	147:13
146:18	150:10	32:5 33:5	148:7
146:20	151:25	33:7 34:1	150:20
147:3 147:5	165:2 165:3	34:4 35:9	151:3 151:3
150:8	165:12	35:10 35:19	152:19
150:12	166:10	36:18 36:21	154:2 154:3
150:17	167:21	37:3	154:17
152:13	169:14	39:24	154:25
152:15	191:15	40:8	157:9
152:16	191:16	40:10 41:23	158:10
152:17	203:15	45:10 45:18	158:12
167:3	218:23	45:25 50:25	159:3
190:13	222:11	58:13 58:22	159:10
192:1 222:7	222:17		159:12
222:18			160:4 160:8

160:13	220:8 220:8	11:24	103:19
163:12	223:4 224:4	29:8	104:2
165:4	230:5 231:2	31:23	104:16
167:14	231:7 232:8	32:1 33:2	108:21
169:4 169:7	232:19	34:6 41:9	108:24
171:9	235:17	41:11 41:16	109:23
171:10	districts	41:17 41:23	110:15
171:14	31:11 74:11	42:8 42:9	110:17
172:3 173:9	122:11	42:22 43:12	110:21
173:14	166:12	44:9 45:3	119:10
175:18	217:7	45:6 45:9	138:13
175:19	District's	45:10 45:16	141:13
177:21	20:7 20:8	45:24	141:15
178:4	23:7 25:8	46:9	143:1 143:5
178:16	29:22	46:13	143:25
178:16	53:2	48:7 50:7	144:12
178:19	69:10 71:25	51:7	144:19
178:22	100:20	56:21	145:3 146:5
179:1 179:4	101:17	58:9	147:24
179:11	103:7	58:12 65:14	173:8 178:3
180:6	103:10	65:17 65:17	201:20
182:25	104:13	65:19 65:22	202:1
186:25	105:5	66:2 66:6	207:24
187:10	105:11	66:6 67:3	210:16
187:13	107:4 123:6	67:7 67:8	210:19
187:24	161:17	68:17 74:10	221:7 228:2
191:8	162:2 174:1	80:16	229:1
191:19	174:9	86:1 87:6	230:18
193:16	190:20	88:25	230:19
194:22	198:11	89:1 89:6	237:16
196:17	198:23	89:7	documentation
196:21	207:15	92:21 92:25	136:19
197:6	208:20	100:13	139:11
197:20	209:7	100:17	193:14
200:2 201:9	209:17	100:18	documented
201:24	211:16	100:19	74:15 74:15
202:21	212:19	100:23	81:2
203:8	217:3	101:5 101:5	85:10 87:19
205:23	District-wide	101:17	95:6
206:21	157:10	102:9	192:9
208:9	184:21	102:13	217:11
216:18	document	103:15	217:11
219:1 220:6		103:16	

244:25	Dorothy 11:22	204:21	89:22 128:5
documents	12:9	due-process	137:17
5:25 23:1	16:13	4:10	155:24
23:4	92:7	duly 39:19	218:22
23:23	149:6	duplicate	225:13
24:5	149:13	30:15	232:9
25:23	199:8	during 6:17	232:14
26:6	Doug 11:21	14:1	245:22
27:13 27:22	12:9	36:25	easier 14:2
29:19 29:21	16:11 17:14	37:6	81:13
30:1	90:15 149:7	74:21 90:19	ed 41:13
34:18 46:22	DP 4:12	109:2	41:14
47:1 47:4	Dr 90:17	112:22	66:9
104:1 125:7	draft 224:4	125:4 125:5	66:24 89:19
142:21	238:19	126:19	89:20 175:2
144:22	drafted	159:16	175:3
173:25	50:6 219:23	160:13	175:20
178:15	224:7	160:19	215:14
188:5	238:12	164:15	244:19
188:17	238:14	166:7	244:24
197:20	drafting	166:19	Edmark
197:22	122:24	170:21	26:25
197:24	dramatic	177:24	27:3 27:5
200:7	174:25	180:8	educated
203:19	dramatically	180:10	232:6
203:20	226:2	181:6	educating
205:6 206:9	drives	184:18	180:1
220:7	225:6 225:9	185:2	education
220:12	dropping	185:13	10:4
231:17	232:4	190:14	46:15 52:14
document's	DSD 91:22	191:23	52:21
102:14	dual 13:9	196:1	53:7
done 8:11	due 6:15	239:19	53:13
43:21 79:16	25:16 27:22		56:7 59:5
97:1	36:19 135:1	<hr/> E <hr/>	65:9
132:8	137:1	Eagle 35:10	67:25
141:19	170:14	ear 8:4	107:18
173:3 189:2	202:19	earlier 46:24	111:6 112:5
193:8 245:4		57:10	112:12
door 7:21 8:5		81:6	112:15
doors 245:19		81:22 81:24	124:16

125:12	education-	33:15 34:21	eloquently
125:24	related	35:15	118:4
126:3	52:6	39:7	118:12
141:16	Education's	56:12 97:22	else 5:8 25:7
157:9	46:11 47:13	131:21	26:15 90:16
157:11	65:8	134:8	91:8 108:24
157:22	educator	178:16	149:10
157:25	175:17	193:15	154:4
158:2 158:3	educators	219:14	157:15
158:9	242:2	elementary	204:10
158:17	effect	158:15	227:14
162:16	132:6	elements	246:5
163:12	135:25	36:23	Ely 11:21
163:20	177:23	37:1	11:21
164:5	180:25	58:21 78:13	12:9
166:15	226:20	eligibility	16:11 16:11
173:13	efficient	89:13 89:17	16:12 16:16
173:14	34:17 36:9	90:11 92:12	16:20 16:21
174:2 180:5	effort	93:9	16:23
191:1 198:4	159:7	94:16 126:4	17:1
204:6	215:22	127:17	17:14 17:15
210:11	efforts	139:19	17:16 17:20
210:15	178:18	139:20	90:15 149:7
212:11	178:22	146:18	email 35:8
218:7 219:3	eight 112:2	146:19	emails 143:19
219:6 221:3	112:7 112:8	146:21	143:19
221:15	112:10	146:24	embedded
221:23	112:11	146:25	61:16 79:2
222:21	112:14	147:3 147:5	Emily
227:5	112:16	162:7 162:8	105:17
educational	187:8 194:5	162:16	105:19
117:15	194:16	162:22	144:17
158:25	eight-week	207:22	emotional
180:22	194:16	232:24	222:13
181:20	EIP 244:12	232:25	emphasis
215:16	either	233:5	225:24
216:5	13:15 13:20	238:25	employee 35:8
216:14	15:5	eligible 50:5	91:22 91:23
221:1	22:13 32:15	127:4 218:7	employees
222:12		eloping 193:4	
225:3			
225:10			

46:20 90:21	243:17	185:23	62:5 64:8
90:23	entirety 93:4	186:12	64:23
91:1	101:6	187:10	65:3
91:19	entitled	199:25	65:24 66:18
130:21	194:12	established	68:3
empty 159:11	entries	170:4	68:10 68:16
enable 116:14	165:15	188:21	68:22
215:13	166:22	establishing	69:4
encompass	entry 165:16	159:6	69:11 69:13
87:5	enumerated	188:20	69:17 69:18
engage 218:16	62:4	estimate	69:20 70:12
engaging	environment	10:20	70:16 70:18
193:6	229:10	estimator	70:23
enroll 160:3	environmental	133:3	71:7
enrolling	240:9	ESY 6:24	71:10
179:6	E-r-i-c-k-s-	7:2 24:4	72:1 72:3
enrollment	e-n 91:9	24:7	72:11 72:12
35:12	Erickson	24:16 28:17	72:14 73:12
ensuing	18:11 18:19	29:11	73:18
119:16	21:9 91:3	31:2 31:7	74:3
ensure	91:4 91:9	32:16 33:11	74:20
74:23	91:21	33:14 35:13	77:9
173:21	92:2	35:15	77:12 78:18
ensuring 86:7	149:6 149:7	43:6	79:1
157:12	err 190:3	44:14 44:23	79:13
218:19	escape 229:9	45:19 47:23	80:9
entered 174:8	ESD 90:21	48:11	80:15 80:25
entertained	90:23	49:9	81:22 81:25
139:25	91:1 91:19	49:13 49:21	82:3 83:4
entire 66:9	especially	51:19	83:5 84:7
108:21	134:22	52:2 52:5	84:18 84:24
108:23	essence 132:3	52:13	85:8
109:16	165:6	53:3 53:5	86:10 86:11
115:16	essentially	53:12 53:20	86:14 86:21
119:1	9:11 9:23	55:3 55:7	86:22 86:24
165:25	131:25	55:12	87:23
234:16	163:25	56:4 58:5	88:4
240:5	169:12	59:1 59:4	88:10 88:20
		59:14	89:8 89:8
		60:8 61:13	89:10 89:17
			90:3
			90:10 92:12
			92:16

93:8 94:6	130:20	166:2	202:5
94:10 94:16	135:22	166:16	202:22
95:5	136:25	167:2 167:5	204:3 204:8
95:21	137:9	167:8	204:24
96:2 96:6	137:12	167:15	207:22
96:18 96:23	137:18	167:18	208:6 213:9
97:3 97:6	138:6 139:4	167:22	219:9
97:8 97:8	139:19	168:21	219:14
98:15 98:22	139:20	169:6	219:23
99:11	139:24	169:14	220:12
108:24	141:21	170:6	220:14
109:1	141:25	171:15	220:17
109:16	142:13	171:17	220:22
112:22	145:16	172:6	220:23
116:3 116:6	145:23	172:19	221:2 222:8
116:11	145:25	172:20	222:19
118:15	146:1 146:2	173:1	222:22
119:6	146:14	173:18	223:8
120:15	146:17	173:21	225:19
120:23	146:22	175:7 176:1	225:20
121:6	146:23	177:3 177:6	233:10
121:19	146:25	177:16	233:13
121:25	147:3 147:5	177:21	233:19
122:5	147:8 150:7	178:1 178:8	234:2 234:3
122:12	150:8 150:8	179:12	234:5
122:15	150:10	179:15	234:10
122:18	150:11	180:10	234:11
122:23	150:17	182:9 188:1	234:17
122:25	151:10	191:6 191:9	238:1 239:2
123:2	151:25	191:12	239:3
123:23	152:12	191:17	239:23
124:3	152:14	192:10	239:24
124:15	153:9	192:22	240:1
124:22	153:11	193:1	240:11
124:22	153:11	193:20	240:18
124:24	159:15	194:12	243:12
125:16	160:13	194:21	244:4
126:18	164:5	199:25	244:13
126:20	164:10	200:4	244:20
126:25	164:24	200:19	244:24
127:4 127:5	165:5	201:15	et 101:12
127:8	165:18	201:18	evaluate
128:11	165:22	201:25	

53:24 54:12	43:3 44:6	119:19	exclusive
evaluating	44:10 50:20	159:25	98:19 99:11
157:12	56:21 74:15	166:9 171:4	exclusively
evaluation	74:15	205:4	28:17
126:2 126:3	81:2	examination	excuse 8:16
126:8 191:1	85:10 87:20	20:11 39:21	17:6
232:25	101:1	51:7	17:17 19:13
238:4	101:12	103:2	19:20 25:11
evaluator	101:20	131:13	34:9
149:8	105:12	189:23	45:22 53:23
event 91:7	129:22	197:15	54:12 55:14
99:24 226:7	148:16	224:25	59:18 66:10
eventually	148:23	241:12	185:4
204:16	161:18	examined	excused 16:16
ever-	162:3	39:19	18:13 19:22
present	174:10	example	exhibit
227:4	190:21	24:8 178:10	11:5 11:8
everybody	195:12	180:7	23:7
90:14	198:12	181:18	25:13
178:23	198:24	194:15	26:6
everyone 5:20	199:24	218:6 218:9	26:22 26:24
111:20	201:5	228:16	27:25 30:13
245:22	207:16	examples 88:5	30:14 30:24
everything	208:21	Excel 104:10	31:11 31:14
26:15 61:21	209:18	except 44:13	35:2 35:4
92:23	211:17	exception	35:5 35:7
106:14	212:20	37:22 90:15	36:1 36:2
106:15	217:11	129:25	36:4
141:10	217:11	exclude	37:13 37:14
226:7	227:9 229:3	5:14 16:3	38:8
226:14	evidenced	24:23 32:22	40:25
evidence	143:18	44:5 205:6	43:2
23:15	evident	excluded 16:6	43:15 44:17
25:6 29:1	176:10	31:15 44:22	44:25
31:8	evidentiary	45:12	45:5
31:11 32:14	44:12	excluding	46:19
36:5 36:8	evidently	205:9	47:9
36:15 37:22	28:22	exclusion	47:22
38:12	exact 114:6	205:12	48:9 52:1
	exactly 45:17		56:17 56:17
	110:13		65:4
			65:23 67:10

67:23	198:11	206:14	238:22
68:4	198:14	existed	explain
68:17 68:21	198:23	48:5 66:3	14:4
69:1	199:1 199:9	151:21	54:22 85:24
69:15	201:4 201:5	151:24	113:4
71:4 72:9	205:9 207:5	152:6	119:13
73:12 74:10	207:15	152:12	128:4
77:6 81:1	207:18	existence	168:24
83:4 86:4	207:19	41:16 65:17	193:17
95:1 95:4	208:20	65:22 66:14	211:4
96:8	209:17	66:19 67:20	explained
99:20 99:22	210:21	68:5	28:16 150:4
100:20	211:16	existing 43:8	explanation
103:7	212:17	exists 242:22	8:23
103:11	212:19	242:24	expressed
103:22	213:1 213:2	expect	221:17
103:23	213:3	10:21	extended 6:20
104:13	213:23	12:1	41:13
105:11	217:1 217:3	50:12	48:9
107:4 110:8	217:3	232:10	49:24
110:9	227:15	expectations	50:3 52:5
110:12	228:15	189:3	53:6
145:8	229:2	expecting	53:16
145:18	241:14	145:15	57:3
148:15	exhibits	expenditures	57:11
148:22	22:12 22:17	113:22	58:2 58:3
148:25	22:22	experience	59:7 74:1
161:1 161:4	25:1 25:4	175:17	74:13 80:16
161:12	25:8 25:9	180:20	83:3 85:5
161:17	25:14 26:12	237:24	85:21 107:5
162:2	26:18 27:23	experiences	107:9
164:11	28:2	175:19	108:19
173:7	28:12 29:15	223:2	115:16
173:15	29:16	expert	116:1
173:24	30:7 30:7	48:23	120:10
174:4 174:9	36:7	238:22	149:1 150:3
183:3	37:21	240:21	159:3 159:6
183:22	38:1	experts 223:4	160:16
190:6	38:10 38:11		164:20
190:16	66:10 100:2		169:24
190:20	141:6 143:7		173:19
194:9 198:1	154:7		
198:6			

179:20	108:2 108:4	179:7	42:7
180:8	108:5	180:24	50:22 82:11
213:25	109:18	181:2	150:12
217:9	109:19	182:18	172:7
219:12	115:15	186:19	183:16
228:17	116:9	186:24	187:24
extended-year	116:12	188:12	188:2
7:3	116:13	190:10	fairly 135:6
extending	116:15	191:12	fall 52:6
48:17 202:8	116:19	202:13	194:22
extensive	116:23	203:1 203:6	202:12
172:5	117:9	203:15	familiar
extensively	117:10	208:15	42:15 42:18
164:6	117:11	210:15	42:20
extent	117:14	211:25	57:7 57:9
14:11 45:24	117:17	219:2	59:23 78:23
61:1	117:18	219:12	117:15
147:7	117:19	219:19	164:4
150:10	117:21	219:20	210:14
155:11	117:24	224:7	210:19
206:15	117:25	225:24	225:17
207:24	118:10	227:4	230:20
extraneous	163:4 163:9	238:10	FAPE 10:4
8:1	238:11	factor 28:24	36:21
eye 155:23	facilitator's	factors 78:13	37:4
	116:6	108:16	52:17 52:19
	fact 13:15	188:11	59:10 59:14
	23:17	240:9	125:16
	51:8	facts 7:14	132:6
	57:15	7:15 33:25	176:13
	104:19	factual 116:7	200:23
	126:23	failed 6:19	214:4
facilitate	137:2	failure	215:25
14:12 131:6	137:11	6:24 37:1	216:9
132:13	164:24	132:6	216:20
facilitated	165:24	133:13	221:11
163:18	166:22	failures	fashion
234:14	170:10	203:22	15:8 40:16
facilitator	170:17	fair 14:12	fast 8:11
107:18	173:25	14:15	115:19
107:25	177:6		225:14
	178:18		

faster	136:15	finds 77:23	231:24
62:15	136:21	97:20	fit 96:13
136:11	138:17	fine 14:9	205:17
favor 170:16	213:22	18:23 22:13	five 18:22
fax 11:10	214:7 220:1	36:11 44:12	34:12 55:17
faxing 103:21	feedback	44:21	112:7 194:5
FBA 141:19	166:6	135:20	five-minute
141:24	feel 49:16	136:10	79:20
142:11	56:11 56:11	finish 70:9	flaws
145:21	57:15 68:21	90:5 242:8	202:13
228:10	73:4 87:7	finished	202:14
240:7	152:21	134:20	floor 232:4
241:23	182:10	140:9 156:5	flopping
244:7 244:9	225:6	finishes 80:7	193:4
244:12	feeling 17:4	first 9:5	flow 134:18
FEA 243:23	fell 194:24	12:4 12:7	187:19
federal	felt 24:6	12:19 27:19	flowing 170:3
6:22 6:23	40:15 80:11	28:9	focus
7:7 13:21	114:2 165:4	30:12 37:11	131:23
42:2 42:4	fewer 152:3	38:22	164:19
42:5	fidelity	39:1	173:7
42:12 42:13	185:18	39:19	208:25
42:19 56:18	188:9 190:1	45:3	focused 86:6
57:1	field 22:5	58:20 61:20	focusing
57:12 57:13	file 6:6	61:21 67:23	171:14
57:16 57:19	170:14	103:14	followup 85:4
57:22 58:21	210:15	107:15	follow-up
59:17 59:24	210:17	108:9	82:24
60:7	filed 6:5	149:16	95:2
60:10 60:12	6:16 16:1	150:4 153:5	96:25
60:19 61:11	fill 157:1	160:3 160:5	193:12
62:19 64:18	final 13:17	171:15	221:8
64:21 70:22	13:23	183:8 184:5	foreseen 37:7
78:10	108:16	184:7	forever 155:5
79:9	138:7	185:10	forget
79:11 80:12	138:12	187:5 187:7	12:14 13:12
80:21 84:20	findings	203:12	114:6
84:22 87:21	13:15	204:20	
96:5 114:19		205:17	
115:9 123:5		229:5	
129:3		230:24	

form 67:20	112:21	187:14	77:5 77:6
102:24	131:5	190:4	80:6
212:11	Friday	gathered	92:18 123:6
219:18	25:14	83:11 153:2	131:15
formal 21:25	184:24	202:25	131:15
formality	front 43:12	gathering	131:21
38:3 183:6	60:5	24:15 33:19	132:16
format 45:11	136:6 138:2	gauge 238:7	150:15
formed 129:18	142:19	gears	158:3 160:7
forms	161:2	158:21	179:17
192:22	188:24	160:22	181:17
219:1 219:2	196:12	197:11	188:16
219:4	froze 184:19	212:22	192:7 192:8
219:19	full 14:12	general	192:17
forth 23:24	14:15	9:11 13:5	215:14
183:14	178:19	33:4	228:18
194:13	function	36:18	231:13
forward	215:19	37:1 43:5	237:14
157:23	215:21	46:13 47:23	242:9
160:23	functional	49:12 49:20	generalized
164:16	191:1	51:6	28:19 164:4
193:22	215:11	51:11 51:21	generally
205:9 223:4	227:24	52:1 53:1	21:15
237:22	228:11	53:2 56:3	32:5
foundation	232:23	56:8	35:14
23:5 154:14	237:20	56:13 57:10	38:7
210:10	fundamental	58:5	62:21
211:5 228:7	182:6	58:13	171:15
foundational	future 9:21	62:4	172:23
179:23	191:3	62:15	generate
220:15		63:4 64:7	238:8
frame 183:24		64:25 68:22	generated
framing		69:3	210:16
195:17		69:14 69:15	226:15
free 10:3		69:25	237:16
52:20 73:4		71:1 71:3	238:6
frequently		72:8 72:9	genesis
12:14		73:9	237:15
	gaining 180:2	73:12 73:25	Gentili 169:1
	gaps 157:2	75:15 75:20	Gentili-
	gather 30:25	76:11 76:14	

Armbrust	221:24	224:17	227:7
163:5 166:9	226:21	225:2 225:6	232:16
Gentili-	226:21	225:10	239:10
Armbrust's	239:16	226:1 238:3	guess 18:18
166:6	239:18	238:24	33:1
gentleman	239:18	gone 163:13	73:14 84:14
16:10	goals 28:15	gotten	87:20 95:17
germane 203:9	28:18	133:8 206:4	96:19 148:9
237:25	29:7	218:4	163:13
239:6	33:15 33:21	grade 214:21	180:4
gets 8:4 10:8	43:7	graduated	185:17
94:4	47:25 48:13	157:24	228:14
getting 85:20	49:14 49:22	granted	230:12
95:12 98:15	50:16	6:11 16:5	231:11
134:25	51:2	Grants 4:11	236:20
135:18	51:20	29:6	guessing
163:21	52:3	66:24 91:23	183:15
177:12	52:10 53:22	141:20	guidance
208:17	53:25 54:14	141:24	41:12
given 7:17	55:2 55:6	142:12	44:1
30:20 37:21	55:25	158:11	44:14 44:23
102:21	56:1 56:5	158:17	46:22
117:21	64:24 73:18	159:2 171:5	48:3
118:17	94:7	175:18	49:12 53:23
134:22	94:11 94:13	181:13	54:11 57:14
159:20	94:17 152:5	182:25	57:23 58:14
200:11	180:16	219:1 224:3	58:21 58:24
203:7	181:7	232:19	59:22
230:13	181:24	graph 197:3	60:4 65:3
241:3	201:9 213:7	great 18:9	66:9
giving	213:8 215:8	206:6	66:18
154:2 154:3	215:10	greatly	68:2
goal 53:4	215:11	188:22	68:10 68:12
58:7 59:2	215:19	grey 30:21	68:16 68:20
62:6	215:21	grief 136:1	68:21 73:20
64:10 68:24	216:4 216:7	grounds 28:1	80:23 88:19
80:19	216:13	growing 180:2	88:25
215:23	221:1 223:2	growth 177:14	89:5 89:6
221:1 221:9	223:13		173:12
221:13	223:16		175:13
	223:17		209:1 213:6
	224:8 224:8		
	224:16		

guide 180:17	guides 101:12	159:12	178:10
guideline	guiding 89:1	165:9	178:15
52:2 53:2		184:17	178:19
53:2 56:8	<hr/> H <hr/>	203:25	178:25
58:5 64:8	half 184:15	204:12	180:25
68:22	185:4	204:15	181:11
69:3 71:3	185:15	204:18	192:9
88:17 88:18	hall 7:19	205:5	193:16
99:8	hallway 134:6	205:11	222:15
guidelines	hand 26:8	205:19	224:9
42:12 42:13	100:1 183:7	happens	224:12
43:5	183:21	142:24	226:1
45:19 47:23	199:18	199:17	229:13
49:20 51:21	225:12	hard 72:19	head 149:9
56:4	225:12	133:4	heads 8:20
56:14 57:11	handbook	haste 160:17	health 189:19
62:4	41:13 66:10	haven't	hear 8:12
64:25 65:24	89:19	134:19	33:23
69:14 69:16	173:13	having 7:13	75:3 75:5
69:25	hand-	21:1 21:2	121:21
71:2 72:8	deliver	39:19 62:14	122:7
72:10 73:10	144:24	76:25	170:20
73:13	handed 61:8	108:11	200:9
74:1	143:1	119:8 137:6	heard 72:23
75:16 75:20	handle 8:2	188:18	73:7
76:11 76:14	22:11 29:24	215:18	104:3 163:2
77:5 77:7	160:8	220:6 239:4	170:11
80:7	hands 8:24	240:17	188:4
85:22 85:23	handwritten	242:17	200:24
85:24	199:5 199:6	Hawaii 29:4	202:10
86:4 86:9	happen 8:18	125:10	204:13
87:5	9:22	126:7	215:18
87:10 87:23	50:12	126:16	216:12
92:19 92:19	169:16	126:21	233:24
93:8 94:4	243:16	137:3	233:25
94:23 96:17	happened 7:23	138:19	243:18
96:22 121:6	133:12	159:8	hearing 4:1
121:16	137:19	160:15	4:10 4:13
123:6 123:7		160:20	5:11 5:19
194:13		177:22	6:3 6:9
194:22		178:3	6:14 6:14
200:8			

6:16	238:24	157:18	House 4:6 4:7
13:16	he's 16:6	229:7	4:24 5:8
14:1	38:7	231:19	7:22 8:6
21:25 22:13	83:13	231:21	8:8 8:14
24:2 26:5	128:18	232:3 243:9	10:25
26:13	167:4	hold 18:24	11:4 11:9
28:2 28:7	183:10	19:19 39:23	11:12 11:18
28:8 31:5	189:1 189:2	holding 13:25	11:20
36:20 36:25	202:8 205:4	187:25	12:4 12:7
37:2 37:6	210:5	207:2	12:9
150:25	227:18	holiday	12:11 12:13
151:1	227:19	182:21	12:18 12:21
202:20	235:19	182:21	13:11
205:15	243:5	hone 164:9	14:6 14:8
Hearings	244:11	honor 23:2	14:20
4:8 13:14	245:6	25:11	15:2
held 4:2 5:24	high 141:21	27:1 27:6	15:14 15:20
6:1 17:10	141:25	61:4	15:23 15:25
62:12	142:13	77:20 84:10	16:4 16:9
141:19	158:14	95:7 103:22	16:12 16:14
146:7	191:5	110:23	16:17
196:13	highlighted	140:22	17:4
196:24	30:23 31:19	191:8	17:12 17:20
202:15	highlighting	Honor's	17:25 18:17
222:21	30:20 30:22	118:13	19:3 19:5
222:23	100:17	hop 212:24	19:7
222:24	hiring 157:11	216:23	19:21
he'll 245:8	historical	hopefully	20:1 20:5
help 14:3	125:25	177:12	20:8
14:6	126:24	180:1	20:17 20:21
14:11 121:8	137:1	hoping 17:2	20:24 21:11
126:6	179:19	163:20	21:15 21:19
153:24	182:1	hostile	21:22
helpful	229:12	131:17	22:4 22:7
131:21	237:20	131:18	22:14 22:24
helps	history 32:15	hot 7:20	23:3 23:9
119:23	32:18	hour 12:3	23:12 23:18
155:13	33:8	hours 18:2	24:21
hence 54:1	33:10		25:7
54:14 97:11	117:15		25:12 25:15
238:3	124:21		25:18 25:21
			26:1 26:4
			26:8

26:12 26:17	63:16 63:21	94:1 95:5	115:18
26:20	63:23	95:8	115:21
27:2 27:7	64:2 64:5	95:11 95:13	115:25
27:11 27:15	64:13	95:19 97:17	116:5
29:18 29:24	66:5	98:10 98:13	116:12
30:4	66:12 66:16	98:21	116:18
30:10 30:15	67:6 67:9	99:1	116:22
30:18 31:21	67:11 67:16	99:16 100:1	117:3 117:6
32:3	68:5 68:6	100:5 100:9	118:6 118:9
32:11 33:22	69:5 69:8	100:25	118:14
34:3	71:15 71:22	101:7	118:20
34:11 34:16	72:19	101:10	119:9
35:6	73:6	102:2 102:7	119:12
35:20 35:25	74:25	102:12	119:24
36:3	75:2 75:5	102:17	120:4
36:10 37:10	75:8	102:20	120:18
37:15 37:18	76:19 76:24	102:25	120:21
38:6	77:3	103:4 103:8	121:11
38:13 38:15	77:21 77:25	103:13	121:14
38:18 38:25	78:5	103:25	121:20
39:4	79:18 79:21	104:12	121:23
39:16	80:4	104:16	122:13
41:3	81:12 81:17	105:1 105:4	123:11
42:23	82:6	105:10	123:14
43:1	82:10 82:14	105:19	123:20
43:15 43:18	82:20 82:23	105:21	123:24
43:20 43:24	83:1	105:22	124:6
44:21	83:13 83:16	105:25	124:20
45:8	84:2 84:9	106:4	125:3
45:21	85:4	106:24	125:14
46:6	85:13 86:16	107:21	125:19
48:20 48:24	86:18 87:13	108:5	127:9
49:2 49:4	87:18 87:22	110:10	127:13
50:21	88:8	110:14	127:15
51:9	88:15 88:22	110:18	127:19
51:15 52:23	89:9	110:24	127:23
55:10 55:18	89:12	111:11	128:13
56:19 56:23	90:5 90:8	111:19	128:18
60:14 60:17	91:7	111:23	129:13
60:21 60:24	91:11 91:14	112:8	129:16
61:5	91:18 91:25	113:21	129:20
62:10 62:13	93:14 93:20	113:25	130:8
63:7 63:9	93:23	115:2 115:9	130:11

130:16	154:22	193:7	220:6
130:23	155:10	193:10	220:18
131:4 132:3	155:17	196:24	221:16
133:1 133:4	155:22	197:2 198:8	221:20
133:17	156:2 156:6	198:10	222:6
133:20	156:14	198:20	222:16
133:23	156:18	198:22	223:6
133:25	158:4 158:7	199:11	223:19
135:8	161:14	199:14	224:21
135:12	161:16	199:21	227:10
135:20	161:24	200:14	227:13
136:10	162:1	201:1 201:6	227:16
137:24	162:20	203:25	227:22
140:20	162:25	205:14	228:6 228:9
140:23	167:10	206:1 206:6	228:25
141:1 141:7	167:13	206:11	229:4
142:20	167:20	206:15	229:15
143:5	168:2 168:7	206:19	229:24
143:17	168:9	206:24	230:13
143:21	168:13	207:5	230:22
143:25	168:19	207:10	231:1 231:4
144:5 144:9	168:24	207:13	231:9
144:18	169:8	208:3 208:7	231:13
144:25	169:19	208:13	231:16
145:2 145:5	169:21	208:18	233:24
145:9	170:1	209:4	234:7 235:6
146:21	171:22	209:11	235:9 236:4
147:1 148:5	171:24	209:15	236:24
148:11	172:8	209:24	237:2 237:8
148:14	172:13	210:5	241:9
148:20	174:6 174:8	210:12	241:11
149:15	176:8 183:6	210:22	242:7 243:4
149:19	183:10	211:3	243:15
149:25	183:19	211:12	243:21
150:15	189:8	211:15	244:1
150:17	189:10	212:3 212:6	244:11
151:6 152:9	189:15	212:16	244:16
153:16	190:17	212:18	244:21
153:20	190:19	214:24	245:2 245:5
153:24	192:1 192:7	215:4	245:8
154:2 154:9	192:12	216:11	245:15
154:14	192:15	216:18	245:21
154:20	192:18	218:23	245:24

246:1 246:3	235:25	35:13 35:17	88:21
246:8	idea 7:1 7:10	40:2 43:7	89:2 90:1
Housekeeping	9:12	47:25 48:13	90:14
62:13	10:22	49:14 49:22	91:1 93:2
House's 195:5	12:2 31:7	50:6 50:9	94:7
hung 10:8	36:22 41:16	50:13 50:16	94:11 94:17
155:6	42:12	51:2 51:8	96:10 100:7
Hungerford	50:5	51:20	100:8
5:5 18:10	57:23 69:20	52:3 52:8	100:21
245:18	72:15	52:10 52:16	102:3
hyphen 163:6	107:15	52:17	107:19
hypothesize	117:20	53:4 53:9	109:17
229:9	157:13	53:15 53:22	110:7
229:23	163:10	53:25 54:14	112:10
230:7 232:5	236:23	55:2 55:4	112:13
hypothetical	identified	55:25	113:4 113:6
124:21	53:25 54:13	56:1 56:5	113:13
239:15	74:4	58:7	113:15
243:4	138:5	58:17	114:16
243:15	153:12	59:2 59:4	116:3
	159:23	59:13 59:21	116:10
	164:13	60:8	116:11
	173:19	61:12	116:24
<u>I</u>	174:17	62:6	118:23
i-c-t-o-n	180:15	64:10 64:20	119:1 119:1
91:17	180:18	64:24 68:24	119:7
I'd 21:1	188:11	69:4	119:16
40:24 43:15	215:23	69:11 69:16	122:16
76:24	218:2 223:3	69:22	122:24
79:3 132:24	identify 50:8	70:5	123:16
135:18	55:5 167:25	70:11 70:18	123:17
161:12	173:11	70:24	124:2 124:4
166:5 173:6	177:17	71:6 71:6	124:5
173:15	215:22	71:11	124:13
174:4	IEP 6:17 6:18	72:1	124:15
190:16	7:4 7:7	72:11 72:16	124:19
198:6	23:24 28:15	73:11 73:11	125:8
198:19	28:18	73:16	126:14
199:9 209:1	29:3 29:5	77:8	126:21
209:3	29:7 29:9	78:12 78:14	127:7
228:14	29:12 33:12	78:17	128:24
232:6	33:15 33:18	79:6	129:3 129:4
		79:12 80:19	130:1 130:5

130:18	184:14	223:24	I'm 5:24 7:19
130:20	185:11	224:5 224:9	8:9 10:7
135:22	185:20	224:12	10:15 10:19
136:15	186:1	225:22	13:11 13:14
136:20	187:16	225:25	16:2
137:7	188:12	226:1	17:17
137:13	188:13	226:19	18:7
137:16	190:10	233:2 233:3	18:18
138:4	192:9	233:7	20:2
138:18	193:23	233:10	20:15
139:10	195:6	234:12	21:7
139:15	200:16	234:14	24:21 25:21
139:18	201:3 201:9	238:3	25:22 26:20
139:21	201:20	238:23	31:22 32:11
146:4 150:5	202:1	238:25	33:23
152:2 153:7	202:21	243:10	34:7 34:9
153:10	204:15	244:2	38:22 39:25
153:13	204:16	IEPs 205:17	40:25
159:8 160:9	204:17	ignore 32:20	41:2
160:11	204:18	ii 58:16	42:21
160:15	204:21	I'll 6:8 8:24	44:4
160:18	205:1 205:7	12:20 12:25	45:21 46:24
160:21	207:19	13:15	46:24
161:7	207:21	15:4	48:4
161:21	210:6 213:7	29:20 34:21	48:23
162:11	213:18	34:21 36:10	49:9
163:19	213:20	36:13 37:18	49:16 49:19
163:22	214:1	38:16 38:18	50:2 50:3
164:8	214:11	38:19 51:13	50:18 52:18
164:14	215:7 215:7	51:24	52:24 55:10
175:13	215:20	64:4 84:3	55:21 56:16
177:19	215:22	95:2 111:12	57:2 58:8
177:22	216:2 216:9	131:23	58:19 58:23
177:23	218:8	132:21	58:24 59:23
178:10	218:22	155:23	60:1 60:2
180:25	218:25	183:2	60:16 61:18
181:3	219:10	197:22	61:23
181:11	219:19	206:22	62:1 62:1
181:14	219:22	207:11	62:7
181:18	220:10	207:14	63:23 64:22
181:18	221:21	242:18	65:2
181:19	222:3		65:23
184:2	222:25		66:8 68:6

68:15	109:25	150:8 152:8	225:14
69:1 69:6	110:8	152:23	228:4
70:6 70:6	110:18	155:21	228:25
70:10	112:3	155:25	229:15
71:2 71:7	112:15	156:23	229:16
71:15 71:16	114:12	157:1	230:17
73:9	114:20	157:10	231:9 235:1
73:12 73:21	114:24	157:19	235:24
74:24 75:11	115:6 115:8	164:10	242:4 242:7
75:16	115:20	164:16	242:16
76:6	115:22	167:10	242:17
76:11 77:10	116:19	172:8	243:1 243:5
77:10 77:19	116:20	172:15	243:6
77:23 78:15	116:21	173:9 180:3	243:13
79:7	117:6 117:9	182:24	244:10
79:17	118:3	183:4	245:4 245:5
81:7	119:12	183:21	imagine 18:16
81:22	121:13	186:22	immaterial
82:9	121:14	192:2	15:9 23:11
82:10 83:16	122:6 123:8	193:22	immediately
83:17 84:13	124:9	196:24	160:17
86:16 87:13	124:10	197:17	179:5
87:22	124:10	197:17	immersed
88:8 90:7	128:12	200:14	134:17
90:16 93:14	128:16	202:17	imminent
95:2 95:3	128:22	204:9	189:17
95:9	130:23	204:16	impact 204:5
95:12 95:18	131:6	204:16	impacted
96:15 96:15	131:20	205:3 205:6	159:24
96:19 96:25	132:7 133:2	205:8	185:21
97:15 97:17	134:3	205:12	200:22
98:15 99:22	134:11	205:16	204:25
99:22	135:3 135:7	205:22	impacting
101:18	135:14	206:4 206:8	221:4 240:2
102:2	135:18	208:10	impacts
102:20	136:6 136:9	209:6	176:12
103:6 105:4	140:1	209:22	implement
105:25	140:10	212:23	6:23 159:7
106:22	141:3	212:24	
106:24	143:21	216:22	
107:7	144:3 147:2	217:2	
108:12	147:17	221:16	
108:13	149:19	225:14	

160:10	ly 4:18	214:9	220:23
160:18	include 55:15	incorrectly	individual
173:20	74:14	9:9	59:8 60:9
188:12	116:10	independent	62:25 101:4
226:17	124:8	13:14 149:8	113:21
implementatio	138:19	191:1	143:22
n 152:4	143:13	indicate	167:14
185:10	143:16	73:16	177:14
186:6	167:16	77:8	207:4 214:2
226:19	191:9	78:17 82:19	individuals
implemented	206:10	102:7	4:18 5:10
153:7	208:23	106:16	10:4 10:7
162:12	215:7	125:16	129:17
186:1	217:10	142:22	149:21
implementing	221:14	indicated	223:6
124:3 124:4	232:7	17:14	industry
157:12	included	125:10	139:23
157:14	46:21	146:3	infer 231:11
187:16	86:8 109:18	150:22	inference
implications	111:14	160:15	169:15
196:8	144:12	165:16	172:1
importance	includes 26:6	166:25	inferences
134:23	66:10	167:14	169:19
important	100:20	167:16	inform
57:20 156:8	including	168:5	57:13
impossible	6:18	168:11	74:5
245:22	52:17	170:17	121:8
impression	112:22	188:8	121:19
163:24	164:5 166:1	193:13	179:1 191:2
164:3	181:24	201:17	223:17
Improvement	206:9	240:14	237:21
10:7	211:25	indicates	238:23
improving	215:10	39:10	information
180:2	234:17	109:23	24:9
inability	inclusive	165:7	24:18 28:23
175:15	60:19	indicating	31:13 32:21
239:13	incomplete	38:16 38:17	37:3
inappropriate	100:13	165:16	74:23
	148:9	244:12	86:6 124:7
	incorporated	indication	
		116:2	

124:13	39:5	229:12	intending
124:13	159:1 218:2	243:8	17:16
125:15	initials	244:23	interact
131:14	109:6 109:7	instead 105:5	222:2
142:16	109:8 109:9	148:21	interacted
142:18	109:13	203:5	112:21
144:16	115:15	instruct	interaction
157:6	115:16	216:8	112:24
169:12	initiate	instruction	interest
174:14	69:12 69:18	40:22	62:14
179:8	72:2 72:12	112:20	164:12
179:14	initiated	153:8 238:7	interested
180:9	163:17	239:21	182:8
181:25	input	239:21	interpret
182:14	108:16	240:19	48:15 58:25
182:20	116:25	instructional	59:11 98:14
195:6	119:1	152:5	129:13
195:19	124:18	185:13	217:14
196:18	124:18	188:14	217:15
196:20	130:4	194:2 194:6	interpretatio
197:7	150:25	194:25	n 56:7
202:24	166:20	integrate	72:24
203:19	166:23	28:10	133:23
220:11	186:22	integrated	163:14
227:23	191:24	45:6 174:1	interpreted
228:18	inquiry 14:13	integrates	97:14
237:21	14:16 159:3	45:3	98:7
237:25	193:9 195:5	intend 135:9	98:22 129:8
239:5	insert	intended 43:6	129:10
241:24	22:22	47:24 48:11	129:14
242:1	219:17	49:13 49:21	206:16
242:14	inserted	50:4	interpreting
243:23	22:21	51:19	168:16
244:7	100:17	52:2 53:3	interrupt
informing	213:7	53:20	8:15 39:12
238:24	instance	56:4 58:6	interrupting
initial 23:22	75:13 75:17	59:1 62:5	7:19 7:25
71:2 71:5	76:12	64:8	intervention
73:10 126:2	116:22	68:23 104:3	227:25
165:20	162:15	104:17	
179:22			
initially			

228:12	31:9	204:20	72:19 72:23
237:21	31:13 31:20	243:9	72:24 72:25
238:21	33:6	243:10	72:25
introduce	33:11 33:16	Item 164:21	73:1
29:21 31:25	35:18	items 155:11	73:19 76:21
32:25	isn't 8:3	iterations	79:4 79:8
36:8 101:21	63:5 204:18	72:25	81:17 83:12
208:1	isolation	it's 4:14	83:24 84:23
208:14	87:11	5:11 8:5	90:4 94:7
227:8	100:24	10:6 15:9	96:21 99:17
introduced	issue 16:19	15:10 15:20	103:17
50:12	20:24 22:12	18:1	104:8
207:24	24:19 24:19	19:17 21:21	106:19
introducing	24:20 29:10	22:1	106:20
31:1	31:5 31:5	22:20 22:23	108:6 108:7
introduction	31:17 62:23	27:3 27:4	110:16
31:18	170:19	30:19 32:14	110:22
invitation	189:16	32:20	112:6 120:1
142:3	189:18	33:3 33:4	120:9
involve 96:18	192:21	35:9	120:11
98:2 98:3	192:21	38:18	121:18
98:5 98:8	192:21	44:5 44:6	127:25
involved	193:12	44:9	130:24
90:22	195:4 196:7	44:12 44:17	130:25
109:24	199:24	44:17 44:17	131:10
111:6	200:6	44:19	131:16
112:11	200:13	45:5 45:9	132:8 133:4
112:14	202:18	45:10 45:11	133:23
118:11	202:19	45:22	137:24
118:15	202:20	46:2 46:3	139:1
119:5	203:22	46:4	140:20
176:11	203:22	46:16 46:18	140:21
215:14	204:10	48:16	140:23
involvement	205:18	53:1	143:7
158:23	205:20	56:17 56:18	143:18
i-r-b-y 91:9	206:16	57:23 58:15	144:24
irrelevant	207:1	60:25	148:9
15:10 23:11	issues 6:14	61:1	151:15
28:14 29:10	9:12	63:17	154:23
	33:23 95:23	64:1	155:3 155:7
	116:23	70:21 71:9	155:18
	125:9		156:6 156:9
			156:11

158:7	27:9	12:9	30:18 31:21
161:16	30:18 39:11	12:11 12:13	32:3
162:1 163:5	62:24 92:24	12:18 12:21	32:11 32:24
163:6 168:2	107:22	13:11 13:13	33:22
168:3 172:1	131:24	14:6 14:8	34:3
172:2 172:7	135:13	14:20	34:11 34:16
174:8 176:8	158:15	15:2	35:6
176:10	209:5	15:14 15:20	35:20 35:25
183:13	220:18	15:23 15:25	36:3 36:6
189:10		16:4 16:9	36:10 37:10
197:18	<hr/> J <hr/>	16:12 16:14	37:15 37:18
198:10	JA 107:14	16:15 16:17	38:6
201:5 205:4	107:15	17:4	38:13 38:15
206:12	108:11	17:12 17:20	38:18 38:25
206:25	JA's 109:8	17:25 18:17	39:4
207:10		19:3 19:5	39:16
207:13	Jewell	19:7	41:3
208:18	11:22	19:21	42:23 42:25
210:6	12:9	20:1 20:5	43:1
211:12	16:13 16:13	20:8	43:15 43:18
211:15	17:22 17:25	20:17 20:21	43:20 43:24
212:6	18:5 92:7	20:24 21:11	44:21
212:18	149:6	21:15 21:19	45:1 45:8
214:19	149:13	21:22	45:21
218:19	199:8	22:4 22:7	46:6
219:25	job 14:15	22:10 22:14	48:20 48:24
222:12	106:7 211:9	22:24	49:2 49:4
226:6		23:3 23:9	50:21
227:23	Joel 5:4	23:12 23:18	51:9
228:6 229:6	jog 183:13	24:21	51:15 52:23
234:6	joint 20:19	25:7	55:10 55:18
234:12	21:4	25:12 25:15	56:19 56:23
236:18		25:18 25:21	60:14 60:17
239:24	judge 4:6 4:7	26:1 26:4	60:21 60:24
240:23	4:24 5:7	26:8	61:5
241:18	5:8 7:19	26:12 26:17	62:10 62:13
243:4	7:22 8:6	26:20	63:7 63:9
243:15	8:8 8:14	27:2 27:7	63:15 63:16
245:10	10:25	27:10 27:11	63:21 63:23
246:4	11:4 11:9	27:15 29:18	64:2 64:5
	11:12 11:15	29:24	64:13
I've 8:11	11:18 11:20	30:4 30:9	66:5
10:8	12:4 12:7	30:10 30:15	66:12 66:16
11:18 13:25			

67:6 67:9	98:21	115:25	131:4 132:3
67:11 67:16	99:1	116:5	133:1 133:4
68:5 68:6	99:14 99:16	116:12	133:17
69:5 69:8	100:1 100:5	116:18	133:20
71:15 71:22	100:9	116:22	133:23
72:19	100:11	117:3 117:6	133:25
73:6	100:25	118:6 118:9	134:3 135:8
74:25	101:7	118:14	135:12
75:2 75:5	101:10	118:20	135:20
75:8	102:2 102:7	119:9	136:10
76:19 76:24	102:12	119:12	137:24
77:3	102:17	119:24	140:20
77:21 77:25	102:20	120:4	140:23
78:5	102:25	120:18	141:1 141:7
79:18 79:19	103:4 103:8	120:21	142:20
79:21	103:13	121:11	143:5
80:4	103:25	121:14	143:17
81:12 81:17	104:12	121:20	143:21
82:6	104:16	121:23	143:25
82:10 82:14	104:19	122:13	144:5 144:9
82:20 82:23	105:1 105:4	123:11	144:18
83:1	105:10	123:14	144:25
83:13 83:16	105:19	123:20	145:2 145:5
84:2 84:9	105:21	123:24	145:9
85:4	105:22	124:6	146:21
85:13 86:16	105:25	124:20	147:1 148:5
86:18 87:13	106:4	125:3	148:11
87:18 87:22	106:24	125:14	148:14
88:8	107:21	125:19	148:20
88:15 88:22	108:5	127:9	149:15
89:9	110:10	127:13	149:19
89:12	110:14	127:15	149:25
90:5 90:8	110:18	127:19	150:15
91:7	110:24	127:23	150:17
91:11 91:14	111:11	128:13	151:6 152:9
91:18 91:25	111:19	128:18	153:16
93:14 93:20	111:23	129:13	153:20
93:23	112:8	129:16	153:24
94:1 95:5	113:21	129:20	154:2 154:9
95:8	113:25	130:8	154:14
95:11 95:13	115:2 115:9	130:11	154:20
95:19 97:17	115:18	130:16	154:22
98:10 98:13	115:21	130:23	155:10

155:17	192:18	212:18	244:11
155:22	193:7 193:8	214:24	244:16
156:2 156:6	193:10	215:4	244:21
156:14	195:5	216:11	245:2 245:5
156:18	195:18	216:17	245:8
158:4 158:7	196:24	218:23	245:15
161:14	197:2 198:8	220:6	245:21
161:16	198:10	220:18	245:24
161:24	198:20	221:5	246:1 246:3
162:1	198:22	221:16	246:7 246:8
162:20	199:11	221:20	judge's 170:3
162:25	199:14	222:6	Judges 133:5
167:10	199:21	222:16	judgment 74:8
167:13	199:22	223:6	74:17
167:20	200:14	223:19	81:4
168:2 168:7	200:24	224:21	85:11
168:9	201:1 201:3	227:10	217:13
168:13	201:6	227:13	217:17
168:19	203:25	227:16	242:1
168:24	205:14	227:22	242:13
169:8	206:1 206:6	228:6 228:9	242:15
169:19	206:11	228:25	242:23
169:21	206:15	229:4	243:11
170:1	206:19	229:15	244:3
171:22	206:24	229:20	244:13
171:24	207:5	229:24	244:17
172:8	207:10	230:13	Julie
172:13	207:13	230:22	107:17
174:6 174:8	208:3 208:7	231:1 231:4	122:2 122:9
176:8 182:7	208:13	231:9	163:5 166:6
183:6	208:18	231:13	166:9
183:10	209:4	231:16	166:11
183:17	209:11	233:24	169:1
183:19	209:15	234:7 235:6	July 66:25
183:24	209:24	235:9 236:4	160:5 160:6
189:8	210:5	236:24	jump 34:8
189:10	210:12	237:2 237:8	193:22
189:15	210:22	241:9	jumping
190:17	211:3	241:11	197:13
190:19	211:12	242:7 243:4	216:22
192:1 192:7	211:15	243:15	
192:12	212:3 212:6	243:21	
192:15	212:16	244:1 244:5	

June 160:2	138:20	156:21	51:2 63:3
justification	141:23	183:21	large 175:14
216:3	142:2 142:5	189:23	last 11:25
<hr/>	144:3 144:6	189:25	25:14
K	145:14	197:11	39:1 61:8
Kailua 178:21	146:6	197:23	65:21
178:25	166:12	203:12	76:5
193:16	172:10	207:18	95:16 95:17
220:8	186:14	209:20	112:17
kapooie 77:2	188:17	210:1 210:4	112:22
key 200:1	188:17	210:14	134:1 134:7
kid 186:6	214:20	211:19	135:21
kids 175:1	214:24	212:9	143:2 144:1
177:12	215:3 223:1	212:22	189:25
Kirby 91:3	knowledgeable	216:22	232:7
91:4	164:7	220:20	late 26:2
91:21	known 106:1	221:8	27:21
92:2 149:6	Kolb 5:2 12:2	224:18	144:24
Kirk 5:2 39:3	12:20 12:23	224:22	later 5:15
K-i-r-k 39:3	16:6 17:5	228:21	18:25
KIRK 39:18	18:7 20:3	237:7 241:7	45:4 63:4
KK 109:14	22:8 33:9	K-o-l-b 39:3	73:17
150:4	33:24 38:13	KOLB 39:18	77:9
167:14	38:15 38:22	Kolb's 82:5	77:11 78:18
KK's 109:13	39:3 39:4	183:13	78:25 79:15
knew 103:21	39:23	<hr/>	80:8 121:10
117:11	40:2 41:1	L	122:11
163:11	41:9	labeled 26:24	130:14
knowledge	43:16	27:2 173:23	133:11
43:14	45:2	182:24	138:5 155:1
47:7	45:14	lack 137:1	155:12
47:19 62:17	46:9 57:1	239:11	165:11
78:1 78:7	60:23	244:25	166:17
108:23	61:7 64:7	lacking	201:18
113:7	66:19 85:16	138:20	203:2 223:8
113:16	98:14 107:6	laid 23:5	223:12
113:17	118:22	211:5	223:18
128:6	135:6 136:6	landed 160:1	latest 20:16
	149:5	language	law 4:7
	155:16	31:19 50:25	6:24 7:16
	155:23		7:16 9:9
	156:4		

9:13	leave 5:16	237:12	75:22 76:17
13:13 13:16	16:22	239:15	108:13
33:24	18:5 18:8	246:8	171:7 195:3
34:2 44:7	79:17 82:16	level	lines 226:5
44:8	135:10	176:23	list 10:15
44:17 44:18	189:18	214:22	10:25
45:23	245:10	216:2	11:5 11:8
46:2	leaving 16:10	levels	11:13 12:15
48:11 48:16	95:16 229:7	124:8	20:10 20:14
48:23 57:24	Lee 23:13	178:22	21:12 21:12
58:21 60:12	37:19 42:24	181:20	25:13
61:1 61:2	149:7 149:8	201:10	26:6
62:18 63:12	202:8	222:5	26:22 91:12
63:12 64:21	left-hand	238:23	91:13 91:15
70:20	107:4	life 155:7	149:16
101:11	legal 14:8	light 237:5	215:6 215:7
132:7	14:10	likely 7:14	listed
138:16	28:6	9:15 19:17	20:22 113:1
139:9 164:5	62:23 63:16	likewise	149:21
200:17	200:16	176:18	160:11
220:1	legally 33:10	limitation	238:15
laws 6:22	63:4	16:21 212:4	lists
62:19 86:8	length 136:25	212:5	103:22
Lawyers 133:5	185:16	limitations	214:12
lay 210:10	188:11	132:23	little 11:2
layers 236:18	lengthy 72:20	132:25	34:8
laying 228:6	let's 34:12	134:7	38:19 62:15
leads 182:5	39:13 58:14	limited	73:1
Leah 35:8	79:23 90:25	13:6	81:12 93:15
learning	98:10	14:21	97:12
48:18 49:10	135:15	21:7	115:19
53:17	135:15	33:16 137:4	115:21
least 28:6	145:19	208:2	121:11
69:21 70:12	157:2	208:19	131:7 134:6
72:15 78:11	157:21	211:23	134:12
79:16 139:7	161:20	239:9	156:22
167:1	173:16	line 14:9	157:21
170:18	182:15	36:11 36:16	158:21
203:17	187:21	37:5	160:23
	218:21		166:5
			179:16

180:4	225:24	68:23	5:23 6:1
183:25	240:6	210:22	9:7 9:17
187:16	loud 93:10	221:3	46:13 57:15
190:1	louder 39:11	maintaining	62:13 63:12
192:19	low 239:19	53:20	69:24
197:13	lower 215:9	maintenance	103:24
212:24	226:9	49:10 49:25	116:7
212:25	226:10	53:17	131:22
243:6	226:16	176:12	149:15
local 13:20		178:7	156:1 160:7
located	Luka 105:17	majority	181:17
110:20	105:20	140:5	183:6
location	105:23	manager 144:4	237:14
159:9	105:25	manner 124:24	matters 52:10
long 10:9	106:6	153:18	may 4:3
12:1	144:17	March 6:16	4:13 5:21
41:16	L-u-k-a	6:19 7:4	7:24 11:6
63:9	105:20	40:3 89:3	13:5
72:24 74:21	LUKA 106:3	90:2 93:2	13:19
79:23	143:7	143:14	15:2 15:7
85:2	143:18	151:21	18:19 18:24
195:2 239:9	lunch 79:25	151:24	19:17 20:13
longer 17:5	112:23	153:1 187:6	20:17 24:23
192:4	131:2 131:6	187:7 190:8	27:10 30:21
192:10	159:17	190:11	34:10
232:18		190:23	38:8 38:8
lose 134:17	<hr/> M <hr/>	191:13	38:13
loss 174:16	mail 144:24	198:5	39:8 39:8
174:20	mailed 5:19	199:18	45:11 45:12
174:22	maintain 43:6	200:19	45:12
174:23	47:24 48:12	202:14	46:2 46:3
175:1	48:17 49:13	204:22	70:3
213:17	49:21	206:2	70:19 75:13
lost 95:12	51:1	marked 56:20	77:19 78:25
lot 7:18	51:19	marking	81:2
11:25	52:2 53:3	183:22	83:20
121:14	53:21	materials	84:7
168:14	56:4 58:6	188:24	85:10 90:16
185:21	59:1 62:5	matter 4:11	91:20 94:12
185:23	64:8		96:18 96:23
			97:4
			97:10 97:12

97:13	46:2 51:6	mediate 114:3	113:5 113:6
98:2 98:5	51:11	114:4	113:13
103:20	96:9	mediation	113:15
112:19	96:16 101:1	114:9	114:14
113:18	134:24	mediator	114:17
122:11	135:13	107:24	117:23
124:8	162:14	108:1 150:5	118:7 119:7
124:23	238:12	163:9	119:7
125:19	meaning		119:18
127:13	131:17	medications	120:15
128:25	meaningful	240:9	120:24
130:11	239:22	meet 58:17	122:16
133:13	means 18:13	59:4	125:4 125:5
147:11	52:5	150:6	125:17
155:12	52:14	215:12	125:24
159:18	53:7	215:15	126:4
172:25	53:13	236:15	126:14
193:2	174:15	meeting 23:24	127:7
199:20	174:20	28:23 28:25	127:20
200:24	176:21	32:22 71:11	128:24
206:24	176:22	89:2	129:9
209:25	207:7	90:14 91:19	130:19
218:8 220:3	222:14	93:5 93:6	130:20
220:24	230:23	100:7 100:8	134:2 137:1
236:10	meant 20:21	100:15	137:7
239:12	21:4 221:13	100:16	137:13
maybe 54:3	231:11	100:21	137:17
96:11 96:11	measurable	101:24	138:18
128:6	86:11 86:13	102:3 104:6	139:10
128:22	87:24	105:7	139:18
128:24	88:5	105:18	140:4
129:6 131:6	88:11 215:8	106:14	141:19
134:11	215:10	106:20	141:23
134:13	measure	107:19	142:3 142:4
135:3	174:13	109:2	142:11
155:23	174:18	109:17	142:14
181:2	measurement	110:7	142:15
186:12	239:7	110:11	142:15
188:4 220:6	Medford	110:13	142:23
234:23	158:10	111:7 111:9	143:10
235:15		111:17	143:12
mean 11:10		111:20	143:14
			143:14

143:16	191:18	90:11 90:18	158:13
143:23	192:6	91:2 93:2	194:12
144:3 144:7	193:23	130:18	194:24
145:15	194:3	135:22	217:7
145:20	194:21	139:15	mildly 57:9
145:23	195:6 195:9	239:1	mind 85:23
145:24	195:11	meets 204:19	117:17
145:25	196:2 196:3	member	122:8
146:7	196:14	69:10 71:25	220:19
146:12	198:5	119:18	mine 13:22
146:15	198:17	136:15	103:7
146:17	198:17	139:21	Mine's 102:19
146:19	199:3 200:3	170:22	minimal 130:5
146:20	200:8	members	232:16
147:4 147:5	202:15	69:3	minimum
147:8 148:1	202:16	69:16	12:3 28:5
149:4	204:1	70:5	170:21
150:11	204:18	70:17 70:17	203:17
150:18	205:5 205:7	72:10 89:10	minted 184:13
150:24	205:20	128:1 171:5	minute
151:8	207:1	171:8	18:18
152:13	207:20	171:10	103:16
152:15	208:5	memory 77:1	211:20
161:7 161:9	208:16	80:10	minutes 18:23
161:10	211:20	150:18	34:12 79:24
161:22	211:21	150:19	100:15
163:4 163:7	211:24	168:15	101:24
163:19	212:11	183:13	105:6
164:8	212:14	mention 137:2	105:16
164:13	233:3 233:5	mentioned	105:18
164:14	233:10	108:9	106:7
164:25	233:10	108:11	106:13
165:25	233:15	134:5 134:6	143:14
181:3	233:17	152:25	147:17
181:19	233:18	178:14	147:19
184:2 190:8	234:1 234:2	213:10	147:20
190:9	234:6 236:3	220:9	147:21
190:10	236:13	235:16	147:25
190:13	meetings 6:17	middle	155:18
190:24	7:4 40:3	67:25	164:13
190:25	40:5 40:7	107:14	
191:9	40:11 90:1		
191:13			

233:18	184:25	moving 16:2	73:15 73:23
245:12		37:13	74:2
mischaracteri	monitoring	71:1	75:22 75:25
zes 71:13	223:17	79:23	76:1
83:8	month	108:13	76:16 76:22
misquoting	138:19	223:4	84:18 86:13
225:14	139:11	237:22	152:20
miss 140:21	months	multiple 70:2	165:4 166:2
missed 98:6	181:2	70:4 70:8	170:5
missing	223:25	70:16 97:14	182:11
139:12	230:6	99:14	182:13
misstates	230:24	178:22	200:11
50:19	morning 4:6	myself 26:9	203:7 214:4
82:4 137:22	17:21	109:21	216:9
misstating	189:21	118:19	221:10
83:14	motion 5:14	120:11	221:14
misstep 21:14	5:16 5:18	120:17	necessity
Mister	6:6 6:7 6:8	135:10	125:16
43:18	6:10 6:11	139:11	negative
169:11	6:12	139:22	169:15
mixed 33:22	15:21 15:23	149:7	neutral
model 219:2	15:25		163:20
219:19	16:5	<hr/> N <hr/>	newly 184:13
moment	25:19 25:24	narrow	nice 245:17
43:24 62:11	144:14	95:23	night 11:25
64:13 71:16	motions 6:5	132:15	nine 111:5
98:13 99:21	203:24	132:15	111:17
143:17	move 14:24	nature 126:24	111:25
157:20	38:16 62:15	necessarily	111:25
165:13	140:25	28:14 65:25	129:7 187:8
181:16	159:2	106:15	221:25
202:2	159:25	133:9	ninth 194:6
moments 61:19	160:23	179:25	nod 8:20
61:23	161:20	181:10	nodded 54:24
114:17	176:23	182:1 208:2	noise 7:25
Monday	217:16	239:8	8:1
160:5 160:6	moved 126:15	240:18	nonparticipat
184:11	movement	necessary	ion 216:3
	131:6	15:20	
	moves 36:7	24:6 59:9	
		59:14 61:14	

nonpreferred	120:12	125:23	126:9
193:5 193:6	128:8 138:2	126:14	
non-special	139:8 163:7	127:7	<hr/> O
175:3	166:8	127:19	OAKS 214:19
nonverbal	167:14	137:1 137:7	214:25
8:19	190:8	137:16	OAR 47:9
nor 210:25	211:20	150:21	48:22 48:25
normal 149:16	216:23	151:8	49:23 50:14
211:7	236:13	160:24	53:19 53:24
normally	nothing	161:11	54:4
11:23	210:25	161:22	54:12 55:16
13:6	notice 5:18	162:9	55:24
45:23	6:22 141:16	164:14	56:2
47:2 160:19	142:10	164:25	65:24 66:18
notations	142:16	166:2 167:1	75:12 78:10
199:5 199:7	143:10	170:6 177:4	81:5 85:12
note 27:19	143:10	181:1 181:3	OAR-cited
28:21	143:13	184:2	50:24
100:12	143:15	184:14	OARs 42:1
106:10	143:16	185:14	42:9
106:12	143:23	199:18	42:16 43:14
120:1	146:10	200:1	48:9
130:25	148:13	200:19	48:10
150:4 155:2	161:7 198:4	201:3 202:3	48:10
168:17	198:17	202:14	51:5
169:22	212:10	204:21	51:11 51:11
238:10	noticed 73:6	205:25	51:22 51:25
noted 12:21	notifying	218:21	52:12
51:20	159:2	222:7	53:5
103:15	noting 151:1	222:17	53:11 54:25
150:21	November 6:18	222:21	56:8
166:14	7:3 24:14	223:23	56:14 57:12
235:24	29:5	233:3 233:5	62:2
notes 100:7	29:13 32:22	233:7 236:3	74:11 74:18
100:21	33:19	236:14	75:17 75:24
102:3	40:3 89:2	nowhere 32:17	76:12 77:15
103:17	90:1 93:2	50:14	78:8
104:6	109:17	nuance 98:6	78:20 78:23
106:21	117:22	nuances	79:3 79:5
120:6 120:7	119:6	121:15	80:21 84:11
	122:16	numerous	85:17 85:18
		112:25	87:21 118:7
			171:19

171:19	83:13 83:23	28:19 33:15	133:2
241:19	97:18	33:21	201:12
241:24	100:12	54:1	201:22
oath 145:11	106:25	54:14	occasions
object 15:3	148:13	55:6	99:15
15:7 28:1	198:9	94:12 94:13	112:25
34:23	198:20	94:18 94:20	126:9
38:8	198:21	122:24	159:18
50:18 52:18	199:14	180:16	occur 9:17
97:15 99:13	200:15	181:7	65:20 83:20
106:22	201:16	181:24	92:9
114:25	207:14	201:10	113:8 131:5
123:8	209:5	213:8 213:8	139:14
140:17	209:25	215:19	142:23
148:10	210:23	215:21	184:23
171:21	211:11	216:4 216:7	185:7 187:4
171:23	211:14	216:13	194:3
171:25	212:4	221:2 223:2	occurred
209:12	212:17	223:14	7:9 7:15
228:23	229:17	225:2 225:7	23:24 33:19
230:10	229:19	225:11	106:14
235:1	231:10	226:1 238:3	149:3
236:20	236:10	238:25	151:25
242:4 243:1	236:11	obligated	184:24
objected	242:8	216:19	187:5 194:5
43:25	objections	217:20	211:24
objecting	15:13 22:15	219:17	212:14
235:6	27:12	234:12	occurring
objection	30:8	observations	240:5
23:3	36:12 37:19	159:17	occurs 114:23
23:10	39:6	obtain	229:9
25:2	148:6	126:6 179:2	239:19
29:22	161:14	217:21	o'clock 16:23
30:5	161:15	217:25	16:24
30:11 30:12	161:25	218:16	October 181:1
31:16 31:23	174:6	218:18	ODE 44:1
34:20 35:20	190:17	obtaining	44:14 44:23
35:23 35:24	190:18	125:7	65:2
36:14 42:24	198:8	obvious 24:23	65:24 66:18
44:24 52:24	objective	obviously	68:2 68:9
71:17 82:11	73:18 77:10	100:18	
	objectives		

68:11 68:16	offering	44:15 44:16	130:16
68:20 68:21	209:7	44:19	133:1 133:7
80:23 163:3	office 4:8	45:8 46:6	133:24
163:9 164:1	13:14	46:12 47:14	133:25
213:6	159:10	47:22	135:8
219:18	159:11	48:8 49:4	135:12
ODE-appointed	159:12	49:17 49:18	135:17
117:21	159:13	56:3	135:20
ODE's 68:12	oftentimes	56:16 56:22	136:1 136:5
offer 31:2	70:3 189:4	57:19 58:23	136:7 136:9
104:3	Oh 20:23 34:9	60:13 61:24	137:11
154:17	43:22 65:15	62:9 63:6	138:7
161:12	68:8	63:13 63:19	138:16
161:23	103:8	63:22	139:17
173:15	148:12	64:1	140:6 142:2
174:4	156:2 185:6	64:16	144:25
190:16	185:6	65:2 68:8	149:14
198:6	227:20	68:20 71:14	150:14
198:19	okay 5:9 5:25	72:17	153:14
199:9 209:3	8:5 8:7 8:8	73:9	154:19
210:21	12:12 12:21	74:10	155:9
212:1	14:5	75:4 75:7	155:21
212:15	14:18 14:25	75:15 76:10	155:21
227:15	15:12 15:14	78:4	156:13
228:8 228:9	19:14	81:19 91:25	156:17
offered	20:2	94:23	156:18
25:5	20:23	97:3	156:21
37:20 37:22	22:3 22:6	99:18 102:1	156:23
38:2	22:7	102:20	157:17
38:12 105:6	22:24 26:21	102:25	157:24
161:18	30:2 30:3	103:3 103:4	158:7
162:3	33:22	104:12	159:21
174:10	34:4 35:6	105:10	160:12
190:21	37:9	106:4 107:3	160:22
198:12	37:10 37:17	107:20	160:25
198:24	38:4 38:5	108:6 108:8	161:12
207:16	38:22 39:14	110:5	161:23
208:21	39:15	111:23	162:19
209:18	41:7	117:6	162:19
211:17	42:21 43:11	118:14	162:25
212:20	43:23 44:3	122:9	165:14
		127:23	166:7
		130:15	166:19

168:2	209:4	open 245:19	219:21
168:10	210:12	opened 169:2	options
168:19	211:11	open-ended	113:17
169:8 170:1	211:14	13:1	145:19
170:10	211:15	operating	145:22
171:24	211:22	29:2	146:2
172:12	213:14	operative	219:12
173:6	214:5	29:12	219:14
173:15	214:23	opinion	orally 15:18
174:23	216:7	87:2 87:4	oranges
175:4	216:25	87:8	181:10
175:24	217:1 217:5	99:10	224:12
176:15	223:19	117:18	order 10:12
177:1	224:20	117:19	10:20 12:22
178:25	226:7 227:3	129:17	13:17 13:17
182:5	227:20	130:7	13:23 20:16
182:15	231:1	152:21	24:22 34:22
183:9	231:12	177:9	132:17
183:21	231:16	186:22	148:3
184:9	233:6 234:7	216:1	177:25
184:12	235:4	217:18	215:24
185:6	236:24	opinions	216:9
185:12	237:2	117:25	217:20
190:19	238:10	opportunity	218:19
191:8	238:18	74:23 75:14	orders 13:19
191:12	239:2 241:7	88:21	Oregon 4:9
191:23	241:23	132:12	6:22 7:8
193:7	242:17	156:3	13:20
193:22	244:1 245:4	163:18	42:9
194:8 195:2	245:5	166:20	43:25 46:10
196:1	old 29:3 29:9	191:24	47:12 47:20
197:18	226:1	205:2 238:7	57:16 57:20
197:25	O-n 91:10	opposed	65:8
198:6 199:9	91:11	98:3 100:24	75:23 76:17
205:13	ones 34:23	123:10	79:9
206:7	128:25	228:17	79:11 84:14
206:18	one-to-one	opposite	96:1 107:17
206:23	112:24	98:18	114:15
207:2 207:5	ongoing 240:7	option 132:21	122:4
207:12	onward 124:15		122:10
207:17			126:15
207:23			
208:18			

158:2 158:3	171:3 227:7	packet	213:23
159:25	otherwise	45:18 61:8	217:3 217:7
162:7	38:1 175:21	page 11:7	218:24
162:12	209:8	27:4	219:11
162:17	outcome	28:22 44:13	219:11
162:18	170:15	44:21 44:22	229:5
163:11	202:16	45:3 61:7	241:21
163:19	202:18	61:8 65:3	pages 27:2
166:13	202:18	68:12 94:25	101:4 102:8
166:15	203:10	95:1 95:3	102:11
171:18	207:1	96:8 100:14	104:21
171:19	out-of-	100:24	148:2
172:1 172:5	state 160:8	102:4	173:22
172:19	outside	102:21	227:23
214:18	7:24 18:4	103:12	paint 157:7
214:19	31:12 96:11	103:21	157:22
214:19	113:17	104:4 104:5	217:23
215:2 219:5	overall	104:7 104:8	pair 193:1
220:1 233:1	222:11	104:22	Pam 90:17
234:12	overbroad	104:24	Pamela 238:15
Oregon's	52:24	107:3	paperclip
172:11	over-	110:25	100:4
organized	complicate	111:1 111:2	paperwork
38:20	103:5	113:1	196:12
original	overrule	115:14	paragraph
100:18	82:10 83:16	116:1	44:22 49:23
102:14	106:25	118:14	50:15
102:16	172:8	119:4	53:6 68:3
102:22	oversight	147:21	164:19
102:24	157:10	148:25	168:4
150:20		149:16	229:13
218:21		150:1	231:20
originally		164:17	232:2
65:16		173:17	parameters
origination	p.m 131:2	173:17	169:10
65:20 66:3	131:3	173:18	paraphrase
others	189:13	173:22	9:8 9:9
130:4 130:6	189:14	174:12	pardon 58:1
139:1 139:3	246:11	194:11	171:22
147:11	pace 134:13	199:4 201:5	
151:16	package 66:18	201:7 213:2	
		213:4	

parent 4:21	26:19	63:13 63:19	95:1 95:7
4:22 4:23	27:1 27:6	63:22	95:9
4:24 5:11	27:20 27:21	64:1 64:4	95:12 95:15
6:2 7:12	28:4	64:6	95:20 97:23
9:4 9:5	28:11 29:20	64:17 66:12	98:12 98:17
9:24	29:23	66:15 66:17	98:20 98:24
10:19 10:24	30:3	66:22	99:2
11:1 11:3	30:21 30:24	67:8	99:16 99:18
11:4 11:7	30:25 31:21	67:10 67:12	100:2 100:6
11:10 11:14	32:2	67:19	100:14
12:1 12:3	32:10 32:13	68:8 69:6	100:16
12:6 12:8	32:25	69:9	101:18
12:10 12:12	33:3 34:9	71:14 71:19	102:1 103:4
12:17 12:20	34:17 35:10	72:4	103:6
13:10	35:11 35:21	72:17 72:19	103:10
14:5 14:7	35:23	73:4 73:8	103:12
14:19	36:2 36:7	75:4	103:20
15:1	37:9	75:10	104:8
15:13 15:19	37:12 37:17	76:5	104:18
15:21 15:24	38:5	76:23	104:23
16:2	38:14	77:4	104:25
16:20 16:25	39:4	77:22	105:13
17:13 17:19	39:16 39:22	78:4 78:6	106:5 107:2
17:23 17:24	40:24	79:18	107:10
19:3 19:4	41:6 41:8	80:4 80:5	108:10
19:6 20:4	42:21	81:7 81:9	108:16
20:6	43:2 43:4	81:16 81:20	110:12
20:15 20:20	43:19 43:22	82:9	110:22
20:23	44:16	82:12 82:20	111:1
21:6	45:9	82:22 82:24	111:19
21:13 21:18	45:15 45:17	83:2	111:22
21:21	46:8 47:2	83:18 83:22	111:24
22:3 22:6	47:5 49:5	84:9	112:9
22:18	49:6 51:5	84:10 85:14	113:25
23:1 23:2	51:10 51:13	86:19 88:23	114:1 115:6
23:7	51:17 52:20	88:24 89:13	115:11
23:11 23:14	52:25 54:16	89:16	115:13
24:1	54:18 55:19	90:5 90:9	115:20
24:11 25:11	56:22 56:25	91:13	115:24
25:13 25:16	60:18 60:23	92:1	116:3
25:19 25:25	61:4 61:6	93:24 93:25	116:19
26:3 26:7	62:14	94:2 94:3	116:21
26:10 26:14	63:6 63:8	94:24	117:7 117:8

118:8	135:5 135:9	155:25	183:16
118:11	135:18	156:3	189:17
118:16	136:5	156:13	190:14
118:19	136:12	156:17	190:14
118:21	137:25	157:2 157:3	190:17
120:4 120:5	138:9	159:1	190:18
120:14	138:14	161:14	191:4 191:6
120:16	140:12	161:15	191:9
120:17	140:22	161:24	191:17
120:19	140:25	161:25	191:24
120:22	141:2 141:5	163:3	192:3 192:8
121:20	141:9	163:12	192:20
121:22	141:12	163:18	193:16
121:24	141:20	164:15	196:2 196:7
122:14	142:11	165:6 165:9	196:10
123:13	143:2 143:3	166:1	196:12
124:18	143:9 144:1	166:20	196:13
125:11	144:11	166:23	196:22
125:19	144:16	167:4 167:7	196:24
125:22	145:5 145:7	167:21	197:9
127:10	145:12	168:20	197:14
127:14	146:23	169:7	197:17
127:22	147:6	169:11	197:17
127:24	147:17	169:13	198:9
128:15	147:23	170:6	198:21
128:20	148:2	170:23	199:14
129:23	148:17	171:9	199:15
129:25	148:24	171:21	201:13
130:1 130:8	149:18	171:23	201:16
130:9	150:2 151:6	171:25	202:7
130:11	151:7	172:4	203:21
130:15	152:11	172:12	204:7 204:8
130:17	152:19	173:23	204:13
131:11	153:14	173:24	204:19
132:2	153:17	174:7 176:7	205:2
132:24	153:22	177:2	205:10
133:2	154:1 154:6	178:17	209:4
133:16	154:10	179:4 179:8	209:10
133:19	154:19	179:18	209:14
133:22	154:21	182:8	209:22
133:24	154:23	182:16	209:25
134:5	155:9	182:23	210:7
134:10	155:15	183:3 183:9	210:24

211:11	242:17	230:11	181:13
211:14	242:21	236:6	182:25
212:3 212:5	243:3	parsed 36:24	219:1 224:3
212:16	243:13	participate	232:19
212:17	243:19	7:6	past 25:16
213:21	243:22	participated	33:14 61:21
214:6 219:8	243:25	6:2	155:6
220:6	244:6 244:8	participation	158:19
221:18	244:15	170:20	182:2
224:21	244:22	particular	paste 47:18
224:23	245:4 245:9	27:13 32:16	68:15
225:1 227:8	245:13	41:17	pasted
227:11	245:24	51:5 124:24	47:10 65:10
227:15	245:25	162:15	68:14 68:18
227:20	parenthesized	165:15	patterned
228:1 228:4	81:5	180:21	219:2
228:8 228:9	parents 92:20	202:2 217:6	pending
228:11	136:14	particularly	177:14
228:20	136:18	114:20	people 7:18
229:5	Parent's	186:8	93:1 93:6
229:17	7:5 27:25	parties	110:6
229:21	30:6	4:15 4:20	110:11
230:3 231:5	30:13 38:10	5:19	111:5 111:9
231:12	101:14	10:16	111:13
231:15	134:20	114:10	111:17
231:18	134:25	116:14	111:25
234:4 234:9	145:24	169:9	112:1
235:3 235:9	148:15	party 13:15	112:11
235:13	148:22	163:20	112:14
235:14	150:21	pass 4:11	112:16
235:14	151:1	29:6	128:22
236:17	165:19	66:24 91:23	128:24
236:22	170:10	141:21	129:7
236:25	173:9	141:24	129:19
237:3	192:25	142:12	138:19
240:13	197:15	158:11	151:9 220:4
241:9	203:11	158:18	per 112:13
241:10	204:20	159:2 171:5	121:5
241:13	207:14	175:18	percent 9:16
241:17	213:1	181:13	perception
241:19	220:22		
241:22	222:8 229:2		
242:11			

163:16	128:10	Picton 19:4	191:3
performance	129:22	19:5 19:7	222:12
124:8	170:18	19:12 19:14	238:21
176:24	222:2	19:18 19:25	play 8:4
176:24	231:17	91:4	116:9
181:21	234:23	91:16 91:22	185:16
182:2 182:4	235:16	92:5	plays 172:1
222:5	238:12	picture	please 8:15
perhaps	241:1	217:23	11:2 14:4
187:12	pertain	piece 29:17	15:4
period	124:23	29:17 81:18	25:20 34:13
24:11 24:12	pertaining	206:14	38:25 39:17
175:16	32:6 96:1	206:14	51:16
184:18	96:6	pieces 126:12	54:7
185:2	99:20	131:13	55:23 56:23
185:13	109:16	223:14	60:14 62:11
186:7	114:16	pinching	72:5
194:17	120:8	193:4	72:20
194:23	120:10	placed 11:6	76:4 76:6
195:14	126:7	placeholder	85:24
206:10	128:11	208:15	90:6
218:5	pertains	placement	113:4
226:11	70:17	108:13	122:20
239:9	pertinent	108:14	140:6 152:7
239:14	154:4	113:17	154:21
239:20	petitioner	places 107:23	168:11
periods 24:15	25:10	placing 68:17	172:16
194:13	phase 155:14	plain 15:11	224:24
195:18	phone 17:7	plan 95:21	235:5
permanent	18:3	173:18	pleases
125:10	18:20 176:6	227:25	103:22
permanently	phones 5:13	228:12	PLEP 222:15
19:22	phrase 69:6	237:21	225:6 225:9
permission	124:10	plane 160:1	PLEPS 108:17
8:15 26:1	200:16	planned 95:6	point 5:9
156:12	phrasing	planning	19:11 24:25
229:8	242:18	130:19	28:7
person 13:2	physical		29:19 34:17
88:15 108:9	193:3		35:10 36:13
128:7			37:22
			38:2 54:4

54:25 55:23	93:17 93:21	post-	241:25
60:3 64:3	poorly 95:24	hearing	242:3
69:23 79:20	portion	63:8	242:12
97:19 99:14	44:4	postpone	242:14
100:11	44:13 44:25	204:3	242:22
109:1	68:9	potential	242:24
119:25	80:11	244:9	242:25
123:9	103:16	potentially	preexisting
124:14	109:22	70:5	208:8
129:21	posed 199:16	218:2 240:5	prefer 132:24
129:24	position 33:8	practice 32:5	147:23
130:12	39:23 65:18	33:5 123:4	prehearing
130:24	66:23	practices	5:23 6:1
132:1	114:13	93:12 121:9	12:22
134:12	157:4	121:18	15:9
135:4 135:7	177:21	122:3	15:15 28:16
138:8	179:23	122:10	preliminarily
144:10	196:2	123:3	102:3
150:25	201:13	123:21	premise
156:16	202:18	166:11	192:25
166:3 167:2	206:20	166:14	preprinted
176:9 177:5	230:14	169:3	104:5 104:7
206:3 206:3	possibility	187:20	104:8
206:7 209:2	85:7	pre 182:19	present
222:19	possible 17:3	218:5	4:16 4:24
223:18	74:22	pre-argue	9:6 31:22
231:9	82:1 82:7	205:3	37:13 37:13
policies	82:16 83:11	pre-break	40:2 40:5
172:11	97:9	185:18	99:22 124:7
policy 34:2	98:14	precise	131:11
34:4	106:11	193:12	181:20
62:19	219:8	prediction	182:3
63:1 63:1	possibly 18:1	244:3	201:10
69:10 69:25	140:20	predictions	216:2 222:5
71:25	163:16	74:16	presentation
83:7 83:8	173:4	81:3	27:25
83:19	178:23	85:11	101:15
84:1 84:5	post 182:19	217:12	188:24
84:5	post-data	217:16	presented
84:22 84:24	218:5		26:23 199:2
85:6 93:3			
93:7			

presenting	152:25	135:22	245:9
132:14	164:13	137:7	problem 21:24
presents	170:17	137:13	104:25
238:23	173:8	141:16	106:3 135:5
presume 95:22	234:21	143:10	problems
226:16	pre-winter	143:15	227:3
230:8	188:4	144:2 144:7	232:11
232:17	primarily	144:22	240:13
pretty	70:3	146:10	240:17
78:24	primary	148:12	procedural
106:14	199:23	153:7 162:9	9:12 9:13
113:15	199:23	162:23	9:14 9:18
184:20	principal	167:15	10:1 131:25
185:21	158:12	176:24	132:5
202:8	158:14	186:3 186:9	200:21
233:17	158:16	198:4 211:2	202:13
243:13	printed 103:9	211:24	202:14
prevail 10:12	104:21	212:10	203:22
prevent 207:7	prior 26:13	214:24	204:4
previous 67:4	29:4 29:9	220:7	procedurally
70:21 71:20	32:21	220:10	37:12
221:21	33:8	226:15	procedure
229:8	33:10	232:7 233:3	16:19
229:22	43:8	234:1	149:15
230:7 231:2	43:12	priority	164:5
231:7	48:3 48:5	137:4 159:6	procedures
231:22	66:3	pro 12:14	45:19
232:4	66:19 66:19	probably	119:15
previously	67:11 67:17	18:16 21:23	139:23
27:24	77:11	34:24	162:13
31:4 47:8	81:8	36:8 38:7	proceed 29:16
84:12 84:13	89:20	62:7	93:12
86:12 86:16	90:2	101:6	132:22
86:20 86:21	90:11	104:20	132:24
112:19	108:12	137:12	173:16
127:2	117:22	147:22	proceedings
136:23	119:15	148:2 152:3	246:10
136:24	125:7 126:4	186:10	process
136:25	130:18	199:23	6:15 14:4
140:14	130:20	200:6	36:20
	134:1	206:13	
		240:20	

42:6	130:19	48:11 56:23	116:25
42:14 50:13	programs	60:8	117:3
74:5	157:11	74:19 75:14	125:12
78:12 79:13	157:15	75:17 76:12	144:1 144:2
86:8 87:4	158:3	89:20 98:16	144:7
88:20 88:21	progress	99:24	144:13
135:1	22:12 28:23	112:20	144:16
170:14	214:17	115:10	163:15
202:19	214:21	117:4	173:13
204:21	215:14	117:25	178:8 179:3
218:16	223:17	125:16	196:21
processes	227:6	126:18	197:9 214:1
162:13	232:16	139:11	219:15
processing	239:17	141:6	221:22
189:3	239:19	159:11	226:8 244:2
produce	progression	160:13	providers
136:19	171:20	166:20	46:15
productive	prohibited	166:23	70:2 70:4
163:21	7:2	173:21	70:8 173:14
professional	proof 7:13	175:13	provides
74:8	9:5 9:15	177:21	75:12 85:6
74:16	132:10	187:15	provision
81:3	204:20	191:24	30:23
85:11	proposal	216:19	51:3
124:18	170:11	218:20	59:10
217:12	171:11	219:19	78:1 78:8
217:17	proposed	221:10	96:23 112:4
242:1	141:18	provided 23:4	112:22
242:12	142:10	26:13 26:15	116:24
242:15	142:17	28:6 31:9	116:25
242:23	protests	36:21 45:25	214:4
243:11	193:3 193:5	46:13 46:19	217:14
244:3	provide	51:11	provisions
244:13	6:20 10:3	53:8	31:7
244:17	18:9	53:14	50:24 62:20
professionals	27:21	57:2 59:7	213:10
176:10	37:4	74:21	prudent
program 35:16	40:21 40:22	84:7 88:5	218:17
222:12	44:20	89:7	prudently
programming	47:2 47:4	89:10 89:18	171:2
		98:22 105:7	psychologist
		111:15	
		111:21	

90:18	172:19	81:8 81:9	167:11
public 5:11	176:1	81:14 82:11	168:15
10:3 52:20	qualify 180:8	82:21 82:25	171:25
pull 101:4	180:10	83:17 84:12	172:16
pulled	186:20	84:20	179:23
47:12	188:1	85:3 86:2	180:4 182:6
100:14	qualifying	87:14	182:7
purporting	179:20	90:6	186:11
103:16	quality	93:15 93:23	192:2 200:1
purpose 32:25	163:22	95:14 95:18	201:23
48:16	203:7	96:14 96:25	209:23
49:9	220:11	98:6	216:12
49:24 52:13	question 15:3	98:10	216:17
53:16 85:22	21:7	99:4 99:7	220:19
113:10	21:10 44:19	101:16	221:9
113:12	45:14 49:17	101:20	223:22
113:14	50:22 50:23	102:16	228:20
142:14	51:24 52:23	108:8	228:24
162:5 208:2	54:20 55:10	110:19	229:25
208:19	55:19 55:21	111:12	230:11
211:3	60:6 60:6	111:22	231:25
211:23	62:2 62:8	112:17	233:23
212:7	62:16	116:6 116:8	234:6
228:15	63:4	118:4 119:9	234:15
229:1	63:12	123:10	235:12
237:15	64:4	123:12	236:6
purposes 4:16	64:15 66:13	123:15	236:19
7:22 17:9	69:5	125:21	237:5
44:3 52:5	70:21	127:3 127:9	240:12
86:3 101:14	71:8	128:13	240:16
209:12	71:18 71:20	128:19	241:5 242:9
213:9	71:21	129:12	243:4
pursuant 5:18	72:5	132:16	243:18
121:16	72:22 72:25	132:18	246:3
	73:3	133:8 136:7	questioning
	74:24 74:25	140:7	12:2 21:5
<u>Q</u>	75:1 75:6	142:20	93:12
qualified	75:9	144:10	131:22
186:21	75:11	150:15	132:18
qualifies	76:3 76:6	152:7 152:8	154:12
171:17	76:10 78:15	153:14	170:3
	78:19 78:22	155:8	232:14
		160:12	

245:9	135:6	74:11 78:16	201:24
questions	159:21	87:1	203:6 226:3
13:1 13:5	169:5	96:18 146:5	232:6
14:14	quite 163:16	ready 22:8	239:14
20:4	<hr/>	30:17 37:11	reasonableness
20:11 21:23	R	78:2	s 24:13
39:5 39:8	raise	real 71:7	reasonably
39:9 41:1	100:12	really	151:20
45:2	196:2	24:19	217:19
51:14 62:24	236:11	76:2 77:1	reasons
63:24	raised 182:18	131:14	124:23
77:1	196:7	134:20	125:2
92:24	236:10	139:4 157:5	189:19
94:5	rang 176:6	182:5 182:6	recall
97:22	range 176:24	189:2	43:10
99:3	rare 218:1	215:18	48:2 48:6
99:19	rate 144:23	216:4	90:16 90:23
103:18	rather 8:9	223:22	91:15
117:7 118:2	29:25 81:14	240:8	92:4
131:13	133:17	reask 52:25	92:11 92:15
131:15	163:9	58:19 71:18	92:16 92:16
131:25	205:11	78:15	92:18
132:14	raw 208:11	236:22	99:5 99:6
132:19	208:11	re-asked	99:9
134:16	210:8	118:3	109:1 110:6
134:21	re 188:19	reason 8:9	119:18
155:11	re-access	21:11 31:18	120:14
155:16	176:22	62:24 70:10	120:23
156:4	reached 206:3	139:23	121:1 121:3
197:21	reading 48:24	142:25	126:6
199:16	58:12	163:10	126:10
199:18	86:1	172:9	128:6 128:9
213:5	88:15	204:11	130:22
216:12	95:9 167:24	232:21	133:15
219:7	172:24	236:9	135:25
224:22	175:2	238:18	137:6
237:6	232:17	reasonable	137:10
quick 16:16	reads 52:13	175:16	137:14
71:7		180:12	139:6
quicker		200:2	145:13
135:19		200:11	146:12
quickly 10:16			146:14

149:4 149:9	193:14	87:20	209:12
151:15	193:15	reconvene	211:6 211:7
155:2 165:9	193:19	73:17	235:20
168:18	receiving	77:8	236:1
170:18	35:13 35:15	77:11 78:17	236:25
170:22	126:10	78:25	237:4 246:6
171:3 197:3	239:20	80:8	246:9
199:6	240:4	131:1	records
226:22	recent	138:18	125:11
226:24	41:21 152:2	139:10	125:12
227:2 233:9	recess	189:20	125:24
233:12	34:10 34:14	246:4	126:7
234:1 234:5	80:2	reconvening	126:11
234:19	131:2	79:14	126:23
234:23	189:13	record 4:17	136:19
re-call 17:18	recite 59:23	7:23 8:2	137:3
Recall 149:6	recognize	8:21 9:1	178:19
recalls	41:9 141:13	9:3 14:16	178:20
133:20	219:20	17:8	178:23
133:21	228:2	17:13 34:12	179:1 179:3
235:10	recognizing	44:3	193:15
receive 11:13	151:2	44:13 45:23	210:15
90:13 143:3	recollection	54:9	211:8
176:13	108:25	60:25 62:10	recounting
178:3 179:7	109:3	62:12 71:23	235:10
195:14	119:24	72:6 76:8	recoup 175:15
195:20	120:3 120:9	80:1	177:13
215:24	122:21	81:17	186:16
220:14	147:9	101:18	186:18
220:15	147:10	105:2 131:4	187:22
received	151:15	137:22	196:5 196:9
25:10 25:14	167:23	151:10	239:13
25:16 25:23	168:20	151:12	recoupable
29:3	183:5	151:13	180:18
33:14	233:14	151:17	recouped
90:2	233:17	151:19	95:24
90:10	reconcile	154:11	recouping
126:20	87:15 87:16	163:5	180:19
142:7 177:7	88:1	183:13	recoupment
177:22	reconciles	183:14	24:17 53:25
178:14		202:24	54:5
		205:9 208:1	

54:13	redirect	referenced	243:22
55:2 55:4	96:14 156:7	44:5 49:8	243:24
55:13 55:15	224:25	50:15 73:19	244:1
55:25 74:14	237:8	106:16	refers 107:16
80:18	reduce 193:2	106:20	109:14
172:21	redundant	122:10	reflect
174:13	70:19	128:2	102:22
175:9	re-engage	135:21	139:8 212:1
176:19	241:3	171:4	212:14
176:21	reevaluate	192:15	reflected
176:22	134:14	204:21	94:9
178:11	refer 44:8	references	120:1
187:1	81:13	53:24 54:12	120:11
194:14	104:17	61:13	128:8 229:6
194:17	120:17	referencing	reflecting
194:23	141:3	41:2 47:8	97:13 200:7
195:1 195:7	168:14	48:8	211:23
195:13	201:3 205:7	48:23 66:15	reflective
200:9 207:7	213:16	68:20 85:17	84:12
213:15	217:2	114:20	106:13
213:19	reference	115:1 115:7	refresh 80:10
217:10	40:25 42:21	179:8	183:5
217:21	43:15 44:14	205:10	refreshed
238:1 238:8	44:19 50:23	227:21	150:24
239:7 241:2	51:8	231:6	regain 175:15
recover	51:18 51:19	referred	regard 31:7
177:13	56:16 56:20	188:5	33:20
recovery	61:3 65:2	213:24	158:24
213:19	73:21	referring	172:6
Re-cross	100:23	25:23 65:23	181:13
156:7	101:16	66:6	regarding
RECROSS-	103:23	105:5 107:3	24:3
EXAMINATION	134:1 142:8	109:10	28:21
237:10	166:8	112:3 112:4	31:8
recruited	173:10	162:15	31:10 41:13
158:11	175:7 178:5	167:21	44:14 44:23
recused 18:13	183:11	168:1	45:18
re-	196:10	229:23	62:2 65:3
demonstrate	196:13	230:8	68:2 68:3
176:23	213:7	241:14	
	230:23	241:23	
		241:24	

68:10 68:16	178:12	84:15 84:20	51:20
79:5	187:1 195:7	96:6 114:19	52:3
147:8	195:13	123:5 129:3	52:14
147:11	200:9 207:7	136:16	53:4 53:7
152:22	213:15	136:21	53:13 53:21
157:3	213:17	138:18	56:5 58:7
164:10	217:10	172:5 176:5	59:2 62:6
164:20	217:21	213:22	64:9
167:7	231:19	213:23	64:24 68:24
181:25	231:21	214:7 220:1	80:19 96:10
182:2 186:1	238:1 238:8	rehashed	96:15 96:19
192:20	239:7	150:19	96:20 96:24
193:14	239:13	reinforce	97:4 97:7
195:6	239:17	203:2	97:9
207:22	239:19	reinforced	97:10
219:9	240:5 241:2	92:24 94:10	98:2 98:3
219:12	regression/	94:16	98:5 98:8
220:12	recoupment	reiterate	98:16 98:23
region	152:1	70:21 99:10	99:11
173:4 173:5	152:20	109:25	111:16
regress 196:4	153:6	139:3	122:4
regression	191:21	reiterated	123:23
24:17 53:24	regs 87:21	93:1 119:19	124:18
54:5	regular	119:21	142:18
54:13	181:19	rejected	160:12
55:1 55:4	regulation	146:2	166:11
55:13 55:15	56:18	relate	198:5
55:25 74:14	57:8	23:23	206:16
80:18	59:17	29:9	215:23
172:21	60:7	79:14	216:17
174:13	64:18 78:11	94:6	220:24
174:15	regulations	94:11	220:25
174:16	42:3 42:4	122:21	220:25
174:19	42:5	199:22	228:21
174:21	42:19	228:16	232:24
174:24	57:2	related	240:16
175:1 175:2	57:12 57:13	43:7	relates 24:13
175:8	57:17 57:19	47:25 48:12	49:12
175:14	57:22 60:19	49:14 49:22	relating
175:21	61:11 70:23	51:1	24:10 50:16
176:1 176:4	80:12 80:21		81:21
176:4			89:8 99:4

99:7 108:19	74:6 74:6	124:11	113:13
117:25	74:8	127:10	113:14
119:6	relying	127:12	113:19
121:25	206:20	150:9	163:25
127:8	229:12	152:23	235:17
relation	remain 5:12	report 228:13	representativ
81:14	245:6	230:2 230:8	e's 114:3
relationships	remaining	232:21	representing
193:2	31:16 36:6	233:2 233:4	4:21 4:25
relative	remedy 7:11	233:6 238:5	235:19
226:18	10:11	238:11	represents
240:11	remember	238:13	60:5
relatively	15:12	238:14	request
178:15	101:19	238:19	5:11 6:16
release 18:25	132:4	244:19	34:10
released	132:22	reporter	47:3 69:4
19:22	133:7	8:3 8:7	69:11 69:17
relevancy	168:16	8:12 8:13	70:18 71:19
23:22 33:16	237:15	8:19 11:1	72:1
relevant 23:6	remembery	25:20 38:17	72:11
24:4 24:5	136:1 136:1	54:6 54:8	142:15
24:11 24:19	render 170:14	54:9	145:23
29:21	rep 40:9	54:17 71:23	145:24
32:7	147:13	72:6	178:20
32:14 32:14	151:3	72:18	178:23
35:21 45:11	repeat	76:7 76:8	191:9 193:1
123:15	55:21 74:24	106:1	204:21
155:3 202:6	74:25	115:19	220:23
202:23	76:3 76:5	122:6 140:6	234:10
204:1 209:9	121:3	140:9	requested
222:11	repetitious	155:19	141:20
239:6	15:10	155:21	142:6
239:24	repetitive	168:10	142:12
240:18	14:22	189:6 235:4	142:22
reliable	rephrase	245:23	191:6
15:11 120:6	56:10	represent	requesting
120:7	64:4	139:22	233:9 234:5
rely 45:25	81:23 82:12	representativ	requests
46:4 74:4	112:12	e 5:2	220:22
		16:7	require 50:24
		40:10 113:9	
		113:11	

60:7	205:12	246:2	retain 178:18
167:2 172:6	resistant	responses	retract 75:16
required	189:5	23:22	76:11 110:7
36:22	resolution	responsibilit	140:22
59:3	134:25	ies 157:8	145:13
61:17 69:20	resolve 114:6	158:24	149:3
69:24 70:11	115:3	responsible	242:18
70:16 70:23	resolved	62:25 112:4	returning
72:14 78:12	115:5	rest 34:13	69:1
79:10	resource	87:5 196:14	reverse 45:22
81:5	158:2	restate 49:17	review 7:6
81:25	resources	62:7	23:1 27:9
82:2	113:16	152:8	28:22 48:14
82:17 82:19	157:15	172:16	61:12 64:19
83:4	respectively	243:17	85:25
83:11 83:12	25:5	restated 84:2	102:23
83:21 83:25	38:11 38:12	restricted	137:18
84:6	respond 27:10	12:23	139:19
85:12 86:22	172:7	restroom	139:20
98:16	responded	245:14	142:11
126:24	169:11	result 159:14	190:25
152:23	169:12	189:4	reviewed 42:5
218:17	respondent	195:11	42:13 101:6
219:4	19:6	204:4	107:9
requirement	respondent's	207:20	136:20
70:12	103:23	215:12	140:16
requirements	responding	215:16	195:8
9:13	35:14	239:11	211:25
36:19	response	241:4	233:2
79:5 79:8	19:25 25:23	resulted 6:25	reviewing
79:11	31:24 32:10	7:9 9:19	62:8 102:16
220:21	54:21 83:15	200:21	108:23
reread	105:9 121:1	204:16	195:5
71:21 76:25	121:4 121:5	results	revised 41:20
RE-REDIRECT	127:2	167:16	41:22
241:12	144:13	resuming	42:7 43:9
rescheduling	194:20	159:3 179:5	46:18 46:23
189:15	234:15	RESY 175:25	63:1 66:2
reserve 19:19			67:15 68:19
29:19			181:7
33:2 34:5			

revising 42:6	rote 221:25	75:23 76:18	S-19 38:11
revision	roughly 18:22	96:1 101:11	S-2 56:17
7:6 61:12	67:1 158:19	114:16	56:20 60:25
64:19	181:1	115:10	213:23
revisions	182:22	219:19	S-20 26:15
41:25 48:6	routine	ruling 6:6	154:10
revisited	225:15	15:5	S-24 26:15
177:17	241:1	24:22	S-25 26:10
rich 119:17	routines	25:1	26:24 28:13
147:20	187:20	29:19	S-26 26:10
Richard 5:1	188:20	34:5	27:2 28:20
right-hand	188:21	45:13 45:22	S-27 26:11
107:8	188:23	205:12	26:23
rights 7:1	241:4	rulings 6:5	27:4
7:5 136:15	RP 109:10	<hr/>	28:21 28:21
road 22:23	165:16	S	38:11
role 113:4	167:16	S-1 38:10	154:10
113:6 114:3	168:5	S-13 141:3	S-3 40:25
114:9	168:11	145:18	42:24
114:12	RP's 109:9	148:6	43:1 43:2
114:13	rule 7:16	148:12	46:12 47:23
114:14	7:16	148:15	66:10 66:13
114:15	18:15 34:21	S-14 148:17	69:2 80:7
114:18	34:21	148:22	80:16
114:19	39:7 44:1	S-15 100:5	81:1 86:4
114:21	47:20	100:6 100:7	99:20
114:22	52:5	101:15	S-4 44:4
114:25	52:13	101:16	44:21 44:22
115:3 115:6	100:23	103:5 103:8	46:19
115:10	100:25	105:3 105:4	47:9 48:9
116:6 116:9	101:1 101:3	S-16 227:21	48:24 50:20
118:6 172:2	101:8	227:22	61:1
room 4:16	243:12	229:2	65:23 66:14
4:19 4:20	ruled 25:3	237:13	66:15 66:17
7:24 16:3	31:4	237:13	67:8
16:5	rules 6:23	241:14	67:11 67:16
34:13 82:16	7:7 7:8	S-17 38:11	67:23
105:23	9:11	S-18 35:5	68:4
158:2	42:10 57:16	35:7 36:3	68:17 105:2
	57:21 62:19	36:4 37:23	213:1 217:2

241:14	53:6	178:15	238:19
S-5 60:18	53:16	178:16	scope 21:22
61:4 61:5	57:3	178:19	22:1 86:7
S-6 30:14	57:11	178:21	112:6
30:19	58:2 58:3	178:25	scores 226:10
34:5 35:4	59:7	179:4	226:10
safe 19:20	66:24 67:25	179:20	se 12:14
Saturday	73:14 73:14	180:8	SEA 58:18
184:8	73:22 73:23	182:25	second 17:8
Savage 149:8	74:1	183:1 183:1	17:22
save 19:16	74:11 74:13	184:10	68:3
saw 230:22	75:21 76:16	184:16	91:15
scenario	77:12 80:16	184:21	147:12
218:11	83:3 85:5	185:9 187:9	151:4 168:2
218:13	85:21 89:21	191:5 192:5	199:4
scenarios	90:3	193:16	202:19
217:24	90:17 91:23	195:19	224:24
Schaffer 7:12	92:10	213:25	231:21
schedule 17:3	93:3	216:18	242:19
135:2	107:5 107:9	217:7 217:9	section 48:16
scheduled	108:19	218:3 219:1	48:21 48:22
137:18	115:17	219:13	49:2 49:8
160:20	116:1	220:8 220:8	50:22 50:24
161:11	120:10	224:4	51:21 51:23
184:16	126:7	228:17	52:4
184:17	141:21	229:7 230:5	52:12
198:18	141:25	232:8	53:5
scheduling	142:13	232:19	57:25 58:15
17:9 17:12	149:1 150:3	239:20	58:25
school 4:11	151:1	240:24	59:6
29:4 29:6	158:10	school-	59:11 61:21
31:11 31:12	158:12	represented	62:3 66:9
35:9	158:13	130:6	68:3
35:10 35:16	158:15	schools	68:21 74:11
35:19 41:14	159:2 159:4	125:13	75:20 76:15
48:9	159:5 159:7	school-year	77:7 80:6
48:17 49:24	160:16	6:20	80:11 81:13
50:4 52:5	164:20	Schwerdt	81:21 85:18
	169:25	90:17	108:13
	173:12	238:16	108:18
	173:19	238:17	108:19
	175:18		
	178:3		

115:16	75:19 75:19	53:7	173:21
115:25	76:13 76:14	53:13	175:7 177:7
119:5	78:9	57:4 58:2	177:22
194:12	78:16 78:20	58:4 59:7	178:1 178:8
214:10	88:4	59:9	179:5
216:2	95:16 95:17	69:11	179:12
236:13	96:16 96:21	72:1	179:21
243:12	168:1	74:13 80:15	180:8
244:2	231:22	80:25 81:22	180:17
sections	separate	85:9	186:2
53:19 59:16	51:13	94:10 96:11	187:12
59:16 59:21	111:12	96:19	188:1
seeing 187:17	173:24	97:3 97:4	192:10
seem 111:3	September	97:6 97:7	194:13
seems 86:10	28:25 181:1	97:8 97:8	195:14
229:11	serve 113:8	97:9	195:20
seen 27:24	179:19	97:10	196:6
28:9 107:22	served 223:24	98:3 98:4	207:22
227:18	service	98:5 98:8	214:1 214:4
227:19	5:21 70:2	98:16 98:23	217:9 218:7
230:19	96:10 96:15	99:12	218:20
selected	96:20 96:24	111:15	219:15
220:7	108:14	111:21	219:23
selection	108:14	113:2	222:3
167:7	108:15	113:23	230:15
selectively	147:13	116:24	240:4
101:4	160:16	116:25	serving
self 157:25	176:25	124:15	158:18
sense 19:15	178:9 218:4	126:18	224:3
34:25	220:25	126:20	sets 10:17
63:7 88:7	239:12	126:25	seven 112:7
95:18	239:25	137:13	187:8 194:5
131:12	240:2 241:5	158:17	several 72:24
132:16	services	158:25	shaded 102:12
133:18	5:3 6:21	159:4 159:7	102:19
sent 11:6	7:3 31:2	159:9	shared 166:11
38:1 142:22	35:13	160:10	169:2
sentence	40:1	160:20	she'll 39:12
73:21 73:25	49:10	162:16	she's 108:9
	52:6 52:14	163:15	shift
		169:25	
		172:10	
		173:20	

158:21	185:21	157:7	slower
160:22	240:2	157:22	39:11 227:7
164:16	silent 5:12	skill 43:6	small 7:24
197:11	similar 10:17	47:24 48:12	174:24
212:22	35:1 35:3	49:13 49:21	174:25
short 78:24	235:12	51:1 52:2	smooth 163:13
195:2	similarly	53:3	snapshot
shorter 73:2	231:24	53:21	200:17
short-term	240:12	56:4 58:6	202:3
77:1	simply 9:2	59:1 62:5	snow 184:20
shot 135:2	70:7	64:9	184:22
showed 126:24	83:24	68:23 80:18	social 222:13
200:10	183:13	95:23 175:9	sole 31:17
showing 183:7	208:4 212:1	177:18	31:18
183:10	212:13	216:8	solely 33:4
202:24	239:4	skills	somebody 23:5
shown 9:14	240:16	48:18 48:19	40:14 69:12
9:18 9:23	single	49:11 49:11	72:2
10:12 108:7	11:23	49:25	106:9
194:1 213:1	73:2 100:24	50:1 50:8	106:19
217:1 217:6	155:8	50:10 50:11	120:8 120:9
shows 10:2	sit 18:4	51:19 53:17	154:12
37:3 173:18	site 46:11	53:18	163:19
206:19	47:11 47:13	86:6 172:21	somehow 20:12
207:6	65:8 65:11	174:16	88:12
sight-based	sitting 79:22	174:20	someone 69:17
158:1	105:23	174:22	72:12
significant	situation	175:15	119:25
175:14	84:6	177:13	154:16
175:22	situations	180:2	163:24
176:17	83:20 156:8	180:18	211:6
184:20	six 112:7	187:22	somewhere
196:8	194:5	213:17	18:16
237:18	Sixteen	213:19	91:8
239:12	185:15	214:20	108:7
significantly	195:21	215:3	110:20
159:24	195:23	224:16	136:3
176:12	sketch	slow 8:16	sooner 204:11
181:8		121:11	
		158:4	
		slowed 8:11	

sorry 7:19	228:4	157:25	64:23
20:15 25:21	229:15	158:1 158:9	79:3
26:20	242:7	158:17	83:19
34:9	242:16	162:16	158:22
46:24 47:19	245:4	164:4 172:9	159:16
48:4	sort 197:4	173:13	177:18
60:16 64:13	216:4	173:13	204:24
66:8 69:8	sound 8:9	174:1 175:2	214:8
76:6	225:17	175:20	specified
77:19 78:15	South 67:25	180:5 198:4	213:18
79:7 81:7	speak 8:10	210:11	213:20
86:17 86:20	11:1	212:10	spectrum
90:7 95:2	34:20 39:11	218:7	159:24
95:18 99:23	65:25 124:9	230:14	240:22
103:6 105:4	128:25	244:19	speculate
105:25	240:21	244:24	9:21
108:12	speaking	specific 30:7	speculation
110:18	8:9	34:22 51:12	97:16
114:24	115:18	62:20	230:12
115:20	170:23	78:1 78:7	242:9
116:19	171:3	78:10 85:21	speculative
118:3	special 5:3	85:22 85:23	243:2 243:3
121:13	13:24 39:25	86:3 86:9	speed 8:11
121:14	41:13 41:14	87:9	8:14
122:7 124:9	46:15	87:22 92:19	spell 39:1
128:12	52:6	94:4	spelled
143:21	52:14	94:23 96:17	91:8 145:20
147:2	53:7	96:22 123:7	163:6
147:17	53:13	124:23	spelling
149:18	56:7 65:9	151:16	112:23
150:9	66:9	164:9 172:2	159:16
152:24	66:23 67:25	172:3	spent 92:11
155:25	89:19 89:20	183:14	92:17
158:6	108:16	192:4	spoke 106:9
168:13	113:2	192:21	106:20
172:15	125:12	221:1	140:3
172:17	125:24	242:10	spoken 139:7
176:7	126:3	244:7 244:8	spot 38:19
192:18	141:16	specifically	
196:24	157:8	21:8	
197:17	157:11	50:15 51:23	
204:16		55:24 64:22	
209:22			

134:7	188:23	state 4:8	136:25
219:16	224:4 229:7	38:25 47:11	137:17
spreadsheet	229:9	47:11 49:15	140:1
104:11	229:23	50:16 57:23	140:11
spring	230:7	58:14	140:13
24:12	230:23	59:1 59:5	178:8 225:2
150:23	231:2	70:22 80:12	225:13
165:18	231:23	81:24 84:15	232:9
167:3 167:5	232:5 232:7	84:22	233:18
167:18	stand 225:4	86:2	234:16
187:2 187:3	standard 9:15	86:10 86:11	234:21
187:5 190:4	15:12 141:7	86:15 115:9	statement
191:22	standardized	122:3 123:5	61:15 72:23
194:4 194:7	214:16	126:15	75:25 76:21
194:19	standards	129:3	77:14 78:25
194:25	58:17	136:16	81:8
195:8	59:5 162:12	136:20	88:13 88:16
195:24	173:1	138:17	90:12 95:25
200:12	213:16	158:2 162:7	96:4 96:5
203:4	standing 25:2	166:12	97:20 97:21
208:24	36:14	169:4 173:4	97:24
218:8	stands 35:3	173:4	98:1
stack 143:4	215:1	210:24	98:15
144:16	start 8:23	214:18	111:14
144:21	15:18 27:12	214:19	124:12
145:8	27:15 27:17	216:2 233:1	127:15
staff 19:16	121:15	240:25	127:25
41:14	153:8 157:2	stated 32:4	128:5
86:8	182:15	36:17 45:17	138:12
88:19 88:19	185:14	46:24	140:18
88:20	245:16	47:8 59:3	152:25
89:1 89:2	started 15:15	67:13 70:11	165:7 165:8
89:10 89:18	67:21 92:10	70:14 71:21	165:19
89:20	108:8 184:8	78:20 80:11	165:20
90:1 98:7	starting	81:6	167:24
112:23	30:13 89:21	83:19 83:24	188:2 215:8
126:10	136:3	85:16	215:10
157:11	157:23	89:6 94:7	220:13
157:12	starts 36:25	107:14	225:4 226:3
159:11		115:3	226:5
159:16		126:20	232:13
159:19		127:2	statements
		136:24	

101:5 168:3	59:25	99:15 123:9	102:4 111:6
220:16	162:11	stricken	111:16
states 43:6	stay 179:24	31:14	111:20
49:8 53:6	226:22	strict 239:18	111:21
54:4 55:1	227:1 227:4	strictly	112:1
55:24	232:10	154:23	112:20
58:5 59:6	232:14	211:22	112:21
69:16	237:12	strike 112:15	112:24
71:5	237:13	113:11	113:7 117:1
72:10	staying	118:1	117:12
79:3	179:16	152:23	122:22
80:17	228:22	structure	122:23
81:1 83:4	stenographer	117:3 117:4	124:20
83:7 83:9	225:15	struggle	124:22
84:1	step 18:14	188:19	125:8
86:24 101:3	stepping	189:2	126:15
107:8	181:16	struggles	126:19
172:25	steps 10:12	188:22	126:20
172:25	stick 101:15	225:15	126:24
231:20	stood 177:21	226:13	127:4
232:3	stop 15:4	student	153:12
236:21	71:7	4:11 6:21	158:22
state's 84:11	77:10 77:11	29:2 29:2	158:22
static	128:22	29:3 31:3	159:14
67:20	130:23	31:7 32:6	159:15
179:24	165:13	32:15 32:17	159:17
226:22	189:19	32:19 32:21	159:19
227:1 227:4	stopping	33:13 35:12	159:23
228:22	130:24	35:22 36:21	159:24
232:10	story 195:2	37:4	159:25
232:15	strategies	39:19 40:14	160:1 160:3
239:5	185:22	40:18 40:19	160:10
stating 49:13	185:24	40:22	160:13
50:25 53:12	187:21	55:5	160:18
81:10 81:10	188:14	59:13 59:13	160:19
103:25	237:22	69:21 72:16	162:6 162:6
150:11	240:7	73:13 75:19	163:22
191:20	straying	75:20 76:14	168:11
234:19		76:15 80:17	171:17
status 179:1		84:6 90:2	172:18
statutes			173:19
			175:8
			175:25

177:7	220:13	226:21	240:24
177:15	220:15	232:14	244:4
177:18	222:18	232:15	stuff
177:23	222:20	240:21	199:17
178:6 179:5	223:7	240:23	227:11
179:12	223:24	student's	sub 213:12
179:20	224:3	6:18 7:1	213:24
180:7	225:15	7:7 7:10	213:25
180:10	226:13	28:15 28:18	subgroup
180:24	226:18	29:3 29:5	35:17
181:24	228:18	33:12 33:18	subject 17:18
182:1 182:2	229:7 230:5	50:7	21:5
185:21	231:19	112:5	59:24
185:24	231:20	112:11	131:22
185:25	232:3	112:14	245:8
186:8	232:10	117:15	subject-
186:16	232:18	123:17	wise 216:24
186:19	237:18	123:21	submission
186:21	237:23	123:22	27:23
187:20	238:20	124:7	submit 26:2
188:1	239:8	124:19	145:6 202:1
188:14	239:16	126:21	submitted
188:18	239:20	158:24	233:4
188:19	240:3 240:4	159:22	submitting
188:22	240:13	160:15	28:2
188:25	240:15	160:16	subsection
189:4	240:16	161:10	52:7
189:18	241:3 243:9	162:15	52:15 55:16
191:3	students 31:3	180:14	58:15 58:15
192:10	31:9	181:6	213:11
193:21	31:12 35:12	187:22	213:11
195:12	35:13 35:15	192:4	213:13
195:13	35:17	193:15	214:9 215:9
195:19	50:4 74:4	210:16	215:12
196:4 196:5	121:6	220:7 221:3	217:7
196:8 204:5	121:16	221:23	Subsections
204:25	169:4	222:1	214:3
205:18	175:20	222:11	substance
215:24	179:24	222:25	165:2 165:3
216:5	180:21	223:1 223:1	
216:15	214:17	223:2	
216:19	214:21	223:13	
218:2 218:6	215:23	232:7 239:5	

191:15	69:17 72:11	77:23	157:10
191:16	187:12	78:8	162:20
200:22	suggesting	78:23 78:24	184:1 189:9
207:21	52:9 98:2	112:23	195:17
208:17	125:23	159:11	208:10
substantial	suggestion	166:16	216:11
125:9 152:5	89:25	178:7	242:20
176:9	90:4 177:2	182:14	surgery 90:19
185:20	summarize	186:19	suspect 36:15
substantially	106:16	193:17	203:1
29:5	summary 6:8	196:3	sustain 52:24
181:7 224:8	6:10 106:19	206:20	71:16 97:17
226:6 226:8	108:14	220:16	200:14
substantiated	108:15	244:18	231:10
186:15	108:15	244:24	Sustained
substantive	summer	supported	242:7
6:25 7:9	29:11 29:12	40:14 40:17	swear 38:23
9:19 10:2	33:20 35:16	64:18 64:21	sworn 38:24
24:3 116:23	40:15 40:18	77:15 78:20	39:19
132:6 132:6	40:20 74:21	supporting	101:23
170:15	112:22	176:11	systemically
195:3	126:19	supports	31:2
203:10	160:14	68:22	
204:5	175:2	supposed	
substantively	175:22	228:5	<hr/> T <hr/>
204:25	177:7	sure 5:20	table 171:6
205:1	177:24	13:11 27:14	tabs 22:22
suffered	178:1 180:9	30:12 34:11	taking
195:13	180:10	54:8 76:7	106:7
sufficiency	194:17	88:8 88:9	202:17
200:18	super 163:13	101:9	talk 22:5
sufficient	supersede	109:22	60:15 152:9
24:16 63:11	57:16 57:23	116:17	158:22
121:8 177:3	supervision	132:11	166:5
177:6 206:4	229:8	133:22	174:12
suggest	support	135:16	234:3
31:1	52:1 58:4	140:8 141:1	talked 15:8
83:24 98:8	58:13 58:21	150:16	235:15
suggested	62:4	154:22	236:12
	63:11 74:22	155:15	236:15
		156:24	

236:16	69:18	151:1 161:7	77:7 78:16
talking	70:5	161:8 166:1	team's 129:25
9:20 35:4	70:17 70:18	166:10	179:11
44:11	71:6 72:1	170:20	180:15
175:24	72:11 72:12	170:22	185:17
176:2	73:11 73:17	171:5 171:8	223:1 223:2
179:17	74:17	175:13	technical
190:1 201:2	77:8	176:10	10:1 107:23
202:13	78:17	181:2 182:9	184:10
202:15	80:8 81:1	182:10	technically
218:22	81:4 85:9	184:13	40:20
236:3	85:12	188:9 190:2	44:6 187:6
240:20	89:2 107:14	196:15	temperature
245:18	110:7	198:17	7:18
talks	112:10	201:12	Ten 195:25
194:15	112:13	201:16	tend 134:16
214:10	116:3	202:2 202:9	ten-day 178:9
target 54:1	117:22	202:10	tendency
54:15	118:23	202:21	205:14
187:22	118:25	203:15	tenets 134:24
224:16	119:1 119:5	203:16	term 52:19
targeted	119:18	208:12	56:1
172:21	125:4 127:3	216:8	94:12
task 221:25	127:8	217:13	107:24
229:9	127:11	217:17	174:21
taught 111:20	127:16	217:19	175:11
157:25	127:21	217:24	175:25
teacher 40:19	127:25	218:15	221:12
67:25	128:1	218:18	terms 83:6
149:11	128:12	219:9	137:22
149:11	128:21	219:21	163:14
158:3	128:22	222:16	203:11
teaching	128:23	222:25	240:6
48:18 49:11	129:4	223:24	test 9:16
50:1 53:18	129:11	233:3 233:7	testified
team 29:6	129:20	234:16	9:17
50:9	130:5 130:7	238:6 242:2	39:20 86:18
59:13	136:20	242:13	89:22 156:9
60:8 69:4	139:1 139:3	242:15	
69:11 69:17	139:21	242:23	
	140:14	243:11	
	150:6	244:12	
	150:21	teams 73:16	

177:20	19:1 19:2	63:11 63:16	238:15
182:18	19:3 20:1	77:3 84:3	241:7
testify 10:22	22:15 54:16	87:4	242:17
12:16 17:14	61:5	88:17 89:13	243:13
86:20 86:21	61:18	91:22 95:11	243:23
101:22	67:9	95:13	244:10
133:12	72:17 76:24	103:15	theme 200:13
133:14	80:5	105:1 114:8	themselves
153:23	81:11 84:10	114:12	12:15 26:12
testifying	85:2	115:6	93:11
11:21	85:13 85:20	120:21	then-existing
20:9 120:20	87:12 91:18	128:9	28:18
123:10	93:25 98:12	130:24	theoretically
143:22	105:21	132:8 132:9	242:5
153:21	109:4 110:5	133:21	therefore
154:13	110:24	135:2	33:13
245:13	115:14	135:25	50:9
testimony	141:11	136:10	138:4
24:24 29:25	145:18	140:18	175:24
33:17 71:13	148:14	146:5 148:5	there's 9:8
72:21	148:20	149:8	13:22
82:5	185:6	149:19	14:9
83:10 83:14	193:10	149:20	14:24
112:13	215:4	153:20	18:2
133:14	223:19	154:4 155:7	22:14
140:19	233:9 237:7	156:9	23:4
143:23	241:8	173:17	30:20 30:23
145:10	Thanksgiving	185:25	36:11 37:24
167:20	185:5 185:7	186:10	70:8 82:7
202:10	that's 5:7	188:2 200:5	87:7 88:3
203:13	9:16 9:17	201:4	88:10 101:2
235:11	10:1	201:23	107:23
235:12	21:19 24:20	205:14	107:24
235:20	25:8	206:4 206:6	121:14
235:21	28:19 29:15	208:15	131:13
236:21	31:19	210:1 210:6	132:13
text 31:17	37:5 42:3	211:3 213:2	154:4
50:19 51:7	44:12 44:21	220:19	154:14
thank 8:13	45:13 45:21	223:21	154:22
11:18 16:14	46:4	224:18	163:6 167:3
17:20	50:21 52:16	228:23	175:7
	52:22 60:10	229:18	
		235:25	

189:17	79:8	122:22	141:20
199:4	timeline	182:17	141:24
204:10	205:24	188:3 220:3	transitioning
204:10	timelines	tough 186:8	191:5 193:5
208:8	135:1	toward 23:15	transmission
208:10	183:25	towards	142:12
they're	timely	37:1 221:2	transportatio
9:25 13:5	29:11	track 28:15	n 96:12
23:6	218:19	134:17	tries 32:25
25:18 26:10	time-saving	135:16	triggered
29:21 37:21	164:12	tracking	125:20
91:11 91:13	today 5:5	213:8	trouble
104:1	11:24	tracks 219:18	242:18
119:14	16:1 134:21	training	true 180:21
131:18	202:21	13:24 88:19	181:23
131:18	today's	89:8 89:9	201:8
151:2 154:5	4:12 24:2	89:17	235:25
177:13	tomorrow	90:2	try 29:25
180:2 193:3	16:21	90:10 90:13	31:1 33:3
193:4	189:20	90:20 90:22	38:16 72:20
205:10	245:16	90:24 91:20	73:2
226:22	tools 185:24	91:24	83:17 115:3
226:25	top 28:22	92:3 92:9	121:18
third 168:3	57:5 149:9	92:14 92:17	133:7 157:1
232:2	topic	92:20 92:22	197:22
thoughts	137:10	92:24	243:6
139:24	169:3	93:1 94:9	trying
threw 203:24	179:16	94:10 99:4	13:11 30:24
throughout	topics 197:14	trainings	49:16 49:19
180:14	total 35:12	172:24	50:2 69:6
227:5	152:4 152:4	transcribe	79:22
thumbnail	185:12	47:14	82:9 84:3
157:7	totally	transcription	84:13 90:16
157:22	134:15	ist 39:2	95:9
Thursday	241:1	transfers	96:21 98:18
92:10 143:2	touch 157:5	160:8	101:13
144:1	197:14	transit 7:18	115:8
144:15	touched	transition	131:10
thus 92:23			133:17
tied 79:5			152:8 155:4

187:11	171:11	74:18 74:20	197:21
187:13	ultimately	84:14 84:23	209:8
226:11	40:8 114:10	118:22	Unreasonable
243:5	165:4 167:6	118:25	203:21
243:14	um 10:24	129:2	unreasonably
Tuesday 4:3	15:19 58:18	131:24	202:22
184:25	197:1	163:23	203:23
turn 35:5	unable 196:4	165:8	untimely 28:3
61:7	unclear 20:12	165:24	unusual
180:3 213:3	21:2	169:13	175:20
turned 11:11	70:10	171:16	175:23
twice 58:11	73:1 140:21	172:17	176:15
192:2	168:13	174:14	176:17
two-minute	underlying	174:19	upcoming
34:10	208:23	175:10	191:22
two-week	understand	181:17	238:25
28:23	5:4 21:3	189:3	update 68:19
type 179:7	35:20 37:20	219:25	updated 68:18
205:15	44:16	220:20	upon 41:25
230:19	63:1	understood	47:3 104:11
237:24	70:15	12:17	123:3 123:4
241:25	79:7 88:9	14:7 16:8	124:19
242:14	101:13	17:19 20:14	179:5
243:20	134:16	21:1 167:20	181:25
243:22	138:17	undue 80:17	206:20
types 88:6	154:1	175:8	upside 241:1
217:23	154:19	175:11	usually 55:17
typical 121:9	162:21	175:12	utilize
typically	171:9	176:4	237:22
71:2 71:5	199:16	195:13	utilized 56:8
73:10 74:20	204:7	239:12	214:16
typos 46:3	206:17	unduly	utilizing
	207:13	15:10 196:4	241:25
	209:6	unhappiness	utterly 31:9
	209:10	163:17	
	244:6	unique	
	understanding	186:6 186:7	
Uh-huh	20:6 21:6	unless	
11:19	54:23 56:18	24:23 34:22	
133:19	57:24 62:17	79:3 119:21	
ultimate	70:22 71:10	153:22	

U

V

140:21	violations	218:4	200:9
235:2 235:6	7:8 9:25	233:21	245:16
243:2	9:25 10:1	233:23	we're 8:19
vagueness	visual 9:2	waste 162:10	9:20
242:5	voice 171:11	ways 97:14	10:22
validate	voices 7:23	Weast 7:12	13:8 17:2
179:11	vs 7:12	web 46:11	17:5 22:8
validated		47:11 47:13	27:11
211:1	<hr/> W <hr/>	65:8 65:10	37:5
various 19:16	wait 18:1	we'd 166:25	37:15
194:14	24:6	208:1	59:3 61:2
214:12	24:15 31:22	Wednesday	63:19 69:20
vast 113:15	31:25 32:11	161:11	72:14 79:22
vein 35:1	33:1 39:6	week 143:2	103:5 105:2
35:3	140:7 171:2	144:1	122:23
verbal 9:2	182:11	weeks	124:4 131:7
193:3 193:5	200:11	138:19	134:13
verify 187:17	201:18	139:10	135:16
verifying	201:25	152:4 153:1	143:11
210:1 210:4	202:4 203:4	153:7	144:23
version 41:21	203:18	194:16	148:18
197:20	219:22	194:18	149:25
versus 235:11	waiting	194:19	175:24
view 58:20	128:16	194:25	176:2 180:1
179:10	170:7	welcome 54:17	183:22
179:11	186:24	72:18	189:19
180:5	187:14	we'll 14:24	189:22
195:12	200:3	19:10 19:19	195:3
215:18	walk 36:16	22:14 24:25	195:17
217:24	213:21	29:24 34:20	197:12
218:15	walking	37:7 44:9	200:18
218:17	37:6	94:20	201:2
violated 7:5	134:5 195:3	101:15	202:13
violation	wasn't 60:6	101:16	202:14
6:25 7:10	65:22	103:1 131:1	205:24
7:15 9:14	81:9	145:9 148:5	206:13
9:18 9:19	108:7 114:5	155:17	207:2
10:2	128:7 150:8	155:22	212:24
	196:16	170:19	216:23
	202:10		219:4
			223:11
			234:12
			236:3 240:1

244:6	82:16	221:9	35:25
we've 92:23	137:19	222:12	36:2
143:12	whether	236:4	37:25 83:23
143:14	6:17 6:24	240:13	211:11
163:2	7:1 7:5	240:24	211:14
164:12	9:16	244:13	withdrawing
185:23	10:10 29:10	whole 31:14	148:18
188:4 192:1	31:6	49:17	withdrawn
194:1	32:15 33:13	68:4 168:3	36:3 36:4
199:24	36:20 59:14	who's	148:23
202:10	60:3	131:11	231:15
240:6	62:18 62:22	142:23	witness 10:14
whatever	63:10 63:11	whose 79:8	10:25 11:13
37:16 59:25	83:18 92:18	window 201:21	12:5 12:7
101:25	93:18	201:22	13:6 13:8
142:22	103:14	winter	13:9 15:4
205:19	115:2 127:4	24:10 152:2	15:5 16:8
Whatever's	146:19	167:16	17:2
136:10	147:4	177:4	17:13 17:17
whenever	152:19	182:16	17:23 18:12
46:22 46:22	152:22	182:19	19:4 19:5
74:22	154:7	182:20	19:8 21:9
82:1 82:7	171:17	184:5 184:7	21:12 23:19
Whereupon	172:18	184:13	37:11 38:24
25:4 36:4	172:25	185:14	39:3
38:10	175:20	187:18	39:15 39:18
43:2 105:11	175:25	190:2	43:21 43:23
148:15	177:4	194:18	48:22
148:22	179:11	195:8	49:1 49:3
161:17	180:18	195:20	55:14 56:24
162:2 174:9	193:3 193:4	202:25	60:16 61:10
190:20	200:2	203:6	64:14 64:16
198:11	200:20	206:10	66:8
198:23	201:24	208:24	66:21 67:18
207:15	202:15	208:25	75:7
208:20	202:21	211:25	76:21 82:15
209:17	203:23	225:23	82:18
211:16	204:2	226:15	84:4 84:4
212:19	204:19	wintess	84:8 85:5
229:2	205:17	229:18	85:8
wherever	211:1	withdraw	87:16 87:19
	211:12		88:3
	213:6 219:8		

88:14 88:18	129:14	192:17	240:20
89:11 89:15	129:19	192:24	witness's
90:7	130:3	194:10	62:17
91:10 91:16	131:17	197:1 197:3	230:13
91:21 93:19	131:19	197:23	wondering
93:22 97:20	132:19	198:2	16:19
98:14 98:25	133:9	198:15	131:20
99:25 100:3	133:18	199:13	134:4
100:10	135:11	210:10	134:11
101:19	140:8 141:6	215:2	135:3
102:6	141:11	221:19	wording
102:10	143:1 143:4	222:4	167:13
102:15	143:22	222:10	work 10:16
102:19	143:24	222:22	240:7
102:23	144:2 144:6	223:13	worked
103:3	144:15	227:16	111:5
105:20	144:21	227:18	111:14
107:1 108:3	145:1 145:4	229:16	117:22
110:16	146:25	230:1	188:18
111:16	147:2	230:21	working
111:18	149:21	230:25	159:19
113:24	149:23	231:3 234:8	works 91:6
115:12	150:16	235:11	worry
116:4	150:19	243:17	134:15
116:10	154:25	244:18	134:19
116:15	158:6 158:8	245:6	worth 207:10
117:2 117:5	161:5	witnesses	wrap 135:6
118:18	162:24	5:15	write 13:17
119:11	164:18	10:17 10:18	14:16 230:1
119:14	167:25	16:3 16:4	writing
120:2	168:5 168:8	17:6	169:21
121:13	168:18	18:12 18:14	written 8:2
121:18	168:22	20:7 20:9	24:22
122:9	169:1	20:19	55:5
123:16	169:18	21:4	63:20 64:25
123:19	169:20	28:11	84:5 146:10
123:22	169:24	33:9 134:22	224:16
124:2	172:7 176:9	170:20	230:6
124:17	182:24	200:10	
125:1 125:5	183:7	203:14	
125:18	183:11	203:18	
127:18	192:6 192:8	207:4	
127:21	192:13		

wrong 68:15

204:17

Y

Yates 4:15

7:25 39:10

yellow 30:20

yes-or-no

234:6

yet 86:12

112:15

206:3

234:21

you'll

18:11 18:12

28:21 104:1

yours 30:22

130:12

yourself

109:21

116:2

120:11

128:2 149:7

152:19

234:17

you've 31:4

56:20

64:2 128:13

132:8

132:22

133:7 133:8

173:7